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Georto, Inc. v. William Gateman, et al.

Transcript of the Testimony of:

Lauren McKinlay

November 18, 2005

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Lauren McKinlay 11-18-2005
Georto, Inc. v. William Gateman, et al.

1 UNITED STATES DISTRICT COURT

2
3 DISTRICT OF MASSACHUSETTS

4 C.A. NO.:04-11730NG

5 GEORTO, INC.,

6 Plaintiff,

7 VS

8 WILLIAM GATEMAN, INDIVIDUALLY

9 And as TRUSTEE OF

10 200 UNION STREET REALTY TRUST

11 Defendant, Third Party Plaintiff, and
12 Third Party Defendant

13 In counterclaim,

14 ROBERTS CORPORATION,

15 Third Party Defendant, and Third
16 Party Plaintiff in Counterclaim

17
18
19 DEPOSITION OF LAUREN McKINLAY

20 TAKEN ON NOVEMBER 18TH, 2005

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2	4
1 DEPOSITION OF Lauren McKinlay, taken	1 ON BEHALF OF ROBERTS CORPORATION:
2 on behalf of the Defendant, pursuant to the	2 LAWSON & WEITZEN, LLP
3 applicable provisions of the Massachusetts Rules	3 BY: Kristina A. Engberg, Esquire
4 of Civil Procedure, before Tara L. Wosny, Notary	4 88 Black Falcon Avenue
5 Public and Certified Shorthand Reporter within	5 Boston, Massachusetts 02210
6 and for the Commonwealth of Massachusetts, at	6 617.439.4990
7 the Offices of James S. Robbins on November	7
8 18th, 2005, at 10:00 a.m., as follows:	8
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3	5
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4 By: Dale C. Kerester, Esquire	4 By Mr. Robbins 106
5 101 Federal Street, 22nd Floor	5 By Mr. Kerester 129
6 Boston, Massachusetts 02110-1800	6 By Miss Engberg
7 617.951.0800	7
8	8
9 ON BEHALF OF GATEMAN:	9
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PROCEEDINGS

LAUREN McKINLAY, the witness,
having been duly cautioned and sworn, testified
upon her oath as follows:

MR. ROBBINS: Counsel have
discussed and agreed to continue to use the
stipulations with regard to the deposition that
we have used previously; that is to say,
reserving all objections, except as to form and
any motions to strike, until the time of trial.

I would like the client to read and
sign the deposition.

Do you have any problem with that?

MR. BRAVERMAN: No.

MR. ROBBINS: Do you want to
waive the notary, but read and sign.

MR. BRAVERMAN: That's fine.

EXAMINATION BY MR. ROBBINS:

Q. Let me just briefly indicate to you
that, as I'm sure your counsel will have said,
that when I say I'd like you to read and sign,
that means that you will have an opportunity to
get a copy of the transcript of today's

MR. BRAVERMAN: Because other
than that, I don't need a copy of it.

MR. ROBBINS: Okay. perfectly
fine.

Could all counsel introduce
themselves so that we have a party list.

MR. KERESTER: Dale Kerester
representing plaintiff, Georto, Inc.

MISS ENGBERG: Kristina
Engberg representing third-party defendants,
Roberts Corporation.

MR. BRAVERMAN: Jonathan
Braverman representing the witness and Goldman
Environmental Consultants.

MR. ROBBINS: Okay. Anything
I've left out that people want me to do?

MR. BRAVERMAN: No.

BY MR. ROBBINS:

Q. Okay. Would you please state your full
name?

A. Lauren McKinlay.

Q. How do you spell your last name?

A. M-C-K-I-N-L-A-Y.

Q. Okay. And at some point in time did

7

9

questions and answers. And you will have an
opportunity to review it to help ensure that the
stenographer accurately took down what you
said.

A. Okay.

Q. So if you said red and she wrote
incorrectly bed, you have a chance to indicate
that on at a sheet and after reading it and
making such corrections as there may have been,
you sign that sheet and return it to me.

A. Okay.

MR. ROBBINS: Can we also
agree that if it's not done within 30 days of
receipt of this, that it will be treated --

MR. BRAVERMAN: It will be
deemed read and signed.

MR. ROBBINS: Deemed read and
signed.

MR. BRAVERMAN: That's fine.
Although I would like a copy of the transcript
sent to me so that we have a trail.

MR. ROBBINS: Okay. Do you
want me to send the copy to you, and then you'll
get it into her hands?

you go by the name of Lauren Maigret?

A. Yes.

Q. Is Maigret your maiden name or former
name?

A. Yes, it is.

Q. When did you start to use the name
McKinlay?

A. September 18th, 2004.

Q. Miss McKinlay, I'm going to ask you
some questions, and the other lawyers may ask
some when I'm finished, about subjects
concerning work that you did on behalf of
Goldman Environmental Consultants at a piece of
property in Lynn, generally referred to as 200
Union Ave.

MR. ROBBINS: Union Street, I
believe. Thank you.

Q. What I'm asking you is for what you
remember, what you know, not your guesses, not
your hunches, but what you know of your own
first-hand knowledge, okay?

A. Yes.

Q. None of us are served by guessing or
filling ins that we all sometimes do. If you

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10	1 don't understand a question that I ask, please 2 say so and I'll rephrase it. If you need to 3 take a break at any time, let me know and I'll 4 be happy to do that. 5 What is your current residence 6 address? 7 A. 148 Carol, C-A-R-O-L, Drive, Dedham, 8 Massachusetts. 9 Q. And your telephone number? 10 A. 781 -461-0263. 11 Q. Okay. Is that your home or work 12 number? 13 A. That's home. 14 Q. Are you currently employed? 15 A. Yes. 16 Q. By whom? 17 A. Goldman Environmental Consultants. 18 Q. What is your Social Security Number, 19 please? 20 A. 043-66-8019. 21 Q. And your date of birth? 22 A. January 11th, 1976. 23 Q. Are you currently married? 24 A. Yes.	12	1 Q. And with what degree did you graduate? 2 A. I believe it's a B.A. 3 Q. A bachelor of arts? 4 A. Yes. 5 Q. Did you have any further formal 6 education after your graduation from Hartwick 7 College in 1998? 8 A. No. 9 Q. Do you hold any licenses from the 10 Commonwealth of Massachusetts other than your 11 motor vehicle license? 12 A. No. 13 Q. Are you certified by any organization 14 in any particular field of work or endeavor? 15 A. Yes. 16 Q. By which organization? 17 A. Certified hazardous material -- 18 actually, the institution would be, The 19 Institute of Hazardous Materials. 20 Q. The Institute of Hazardous Materials. 21 Okay. And you have a certificate of some sort 22 from them? 23 A. Yes. 24 Q. And what does the certificate indicate?
11	1 Q. Can you give me beginning with when you 2 graduated with high school, your formal 3 education background? So beginning with where 4 did you go to high school? 5 A. Torrington High School. 6 Q. And where is that located? 7 A. In Torrington, Connecticut. 8 Q. Okay. Did you graduate? 9 A. Yes. 10 Q. What year? 11 A. 1994. 12 Q. And have you had any further formal 13 education after your graduation from high 14 school? 15 A. Yes. 16 Q. Where was that? 17 A. Hartwick College. 18 Q. And where is Hartwick located? 19 A. Oneida, New York. 20 Q. And when were you there? 21 A. I graduated in 1998. 22 Q. And what was your field or fields of 23 study at Hartwick? 24 A. I majored in geology.	13	1 A. It's a certified hazardous materials 2 manager certificate. 3 Q. Okay. And in order to get this 4 certificate, what did you have to do? 5 A. You have to demonstrate through an 6 application that you meet certain requirements. 7 And if they accept your application, you sit for 8 an exam and you have to pass the exam. 9 Q. This certificate indicates to the world 10 what about you? 11 A. It indicates that I have a knowledge of 12 proper uses in handling of hazardous materials 13 in a very broad range. And within that range 14 every individual has a specialty; so you're not 15 necessarily knowledgeable in everything that the 16 certification covers. 17 Q. Okay. What is the specific material or 18 materials that your certificate covers you? 19 A. Could you clarify what you're asking? 20 Q. Sure. I thought what you were asking 21 is having this certificate doesn't mean that 22 you're qualified for all hazardous materials, 23 but it indicates that you're at least qualified 24 for certain hazardous materials, or did I

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1 misunderstand you?
 2 A. It indicates that you are qualified for
 3 a list of regulations that it covers. It's up
 4 to the individual -- it's up to an individual to
 5 determine if, according to a certain oath that
 6 you have to sign, if you have the knowledge to
 7 sign off on something with that certificate.
 8 You have to feel comfortable that
 9 you have the knowledge to say this is -- I'm not
 10 sure how to explain it definitively.
 11 Q. Do you want to give me an example?
 12 A. For instance, it covers OSHA regs, DOT
 13 regs, a wide range of regulations. If you're
 14 principal -- if your job and experience only
 15 deals with OSHA regs, you wouldn't be able to
 16 sign off on, say, that these -- that you have
 17 knowledge of the DOT regs?
 18 Q. And the decision as to whether you can,
 19 quote, sign off that you know the DOT regs is
 20 personal, it's based on your sense of what you
 21 know?
 22 A. Exactly, your experience.
 23 Q. And your experience. So but as far as
 24 the Institute of Hazardous Materials, once they

15

1 give you the certificate, they're saying that
 2 you're familiar with certain sets of regulations
 3 and it's up to you which types of regulations
 4 you want to represent to the world that you're
 5 qualified to deal with?
 6 A. Correct, more or less.
 7 Q. Okay. Tell me what is the less?
 8 A. No, that would be a correct statement.
 9 Q. So the regs involves OSHA, right? The
 10 regulations that this Hazardous Materials
 11 Institute of materials and the certificate
 12 affirms your knowledge of the OSHA regulations;
 13 is that correct, isn't that what you said?
 14 A. There's a broad range of regulations.
 15 I wouldn't attempt to name them all because I
 16 know I would miss some of the regulations that
 17 it covers.
 18 Q. Well, you'll pardon me, but I do need
 19 to know what your background is. When did you
 20 get the certificate?
 21 A. In June of 2005.
 22 Q. Okay. And you sat for an exam before
 23 you got it, right?
 24 A. Correct.

16

1 Q. When was the exam?
 2 A. Either April or May of 2005. I don't
 3 recall.
 4 Q. Okay. Am I correct you haven't had a
 5 deposition taken before?
 6 A. Correct.
 7 Q. Okay. I don't want you to -- within
 8 the limits of what is humanly possible, I don't
 9 want you to feel nervous more than you need to.
 10 Nobody is here to yell at you, jump at you or
 11 anything. Nobody is saying that you did
 12 anything wrong or bad, okay? We just want to
 13 find out some information about what happened,
 14 okay?
 15 A. That's fine.
 16 Q. All right. How long is the exam that
 17 you sat for?
 18 A. I believe it was a four-hour period.
 19 Q. Okay. And is this a take-home exam or
 20 did you have to go to some location to do this?
 21 A. It's a proctored exam.
 22 Q. So you went someplace and there was an
 23 independent person monitoring your exam? Is
 24 that what you mean by proctored?

17

1 A. Correct.
 2 Q. Okay. Did you have some course of
 3 study that led you to become ready to take this
 4 exam?
 5 A. I took a review course.
 6 Q. What does a review course mean, or what
 7 do you mean by a review course?
 8 A. There is a course offered that's
 9 sponsored by the Academy of Hazardous Materials
 10 Management that broadly covers all of the
 11 regulations that encompass the CHMM
 12 certification so that you can get a handle of
 13 what regulations will be covered in the exam.
 14 Q. Okay. And where is this Academy of
 15 Hazardous Management located?
 16 A. I don't recall.
 17 Q. Did you go someplace for this case?
 18 A. I did but not to the academy.
 19 Q. Okay. Where did you go for the course?
 20 A. I believe it's called the Safety
 21 Building in Braintree, Massachusetts.
 22 Q. Who sponsored this particular course at
 23 the Braintree building or the safety building in
 24 Braintree?

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1 A. I believe it was sponsored by the
2 Academy of Hazardous Management.

3 Q. And the purpose of this course was to
4 familiarize you with the various kinds of
5 regulations that pertain to hazardous materials?

6 A. Government regulations that pertain to
7 hazardous materials. The purpose of it was to
8 basically outline what regulations are covered
9 under the CHMM certification.

10 Q. Okay. And so basically you took this
11 course when? You sat for the exam you thought
12 in April or May, so approximately when did you
13 go to this review course?

14 A. A couple of months before the exam.

15 Q. Okay. And what did the course -- how
16 many hours did the course consist of or how many
17 days if you were there for a period of days?

18 A. I believe it was four, eight-hour days.

19 Q. Okay. And going back now to what were
20 the sets of regulations that you were reviewing
21 for purposes of taking the test, what were the
22 sets of regulations? You mentioned something
23 with OSHA and DOT regulations?

24 A. It's such a wide spectrum. There's

20

1 A. Yes.

2 Q. What is the requirement?

3 A. There's two levels of certification.

4 One, I believe, requires five years of practical
5 experience and the other requires seven years of
6 practical experience.

7 Q. And which level did you qualify for?

8 A. The masters level, which is the seven
9 years.

10 Q. Okay. And which were the seven years
11 that you presented as your experience?

12 A. From 1998 to 2005.

13 Q. Okay. Let me try to clarify something
14 that I'm a little confused by. The certificate
15 indicates apparently that you've had in your
16 case seven years of some kind of field
17 experience working with hazardous materials, is
18 that it, or just you have been working for
19 someplace that sends you out in the field for
20 seven years?

21 A. I don't recall the specific -- I don't
22 recall the specifics of the application where
23 you had to demonstrate -- I don't recall what
24 they deemed as practical experiences.

19

1 numerous regulations that it covers. They're
2 all federal regulations.

3 Q. So first of all, these are all federal
4 regulations?

5 A. Correct.

6 Q. Okay. In other words, there are no
7 state or Commonwealth or municipal regulations
8 included in this test?

9 A. No, they're federal regulations.

10 Q. Okay. So among the groups of federal
11 regulations, what were the names, even if it's
12 not the entire set of that agency's regulations,
13 what are the names of the agencies who
14 propounded the regulations that you were
15 learning about?

16 A. The ones that I recall are OSHA, DOT,
17 NPDES. I don't recall the proper names of some
18 of them, but regulations that deal with nuclear
19 materials, hazardous -- like, transportation and
20 storage and proper labeling of hazardous
21 materials. Those are only a few of them. I
22 don't recall all of them.

23 Q. Does getting this certificate require
24 you to have any experience in the field?

21

1 Q. And the thing I was not clear earlier
2 about is, these various federal regulations says
3 that successfully getting the certificate says
4 to the world that you've demonstrated some level
5 of understanding of at least the OSHA, the DOT,
6 the NPDES, nuclear materials and the
7 transportation and labeling of hazardous
8 materials; is that right, that you have some
9 knowledge of those regulations?

10 A. Correct.

11 Q. Okay. And it also indicates in your
12 case that you've had seven years of some kind of
13 practical experience, but you don't what the
14 practical experience is really supposed to
15 consist of. As you sit here today, you don't
16 remember?

17 A. Right, I don't recall.

18 Q. Okay. Then you said something about
19 what sounded to me like it was left up to your
20 own judgment as to whether to represent yourself
21 to the public as knowing certain of these
22 things, these regulations, and that's what I'm a
23 little confused about.

24 A. You sign an oath basically stating that

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1 you won't certify certain regulations unless you
2 have what they deem the practical experience in
3 that particular field dealing with those
4 regulations.

5 Q. Okay. So it's not like you have to
6 take another test on the regulations. It's that
7 you have to get practical experience with regard
8 to certain of these regulations that you named
9 in order to abide by your oath before
10 representing yourself to be knowledgeable?

11 A. Correct.

12 Q. Okay. Following your graduation in --
13 let me backup. Your study of geology at
14 Hartwick -- is Hartwick an engineering school by
15 any chance?

16 A. No.

17 Q. So it's a liberal arts college?

18 A. Yes.

19 Q. Four years?

20 A. Yes.

21 Q. And as a geology major, how many
22 courses did you take that pertained to your
23 geology major?

24 A. I don't recall.

23

1 Q. Was it more than five?

2 A. Yes.

3 Q. More than 10?

4 A. Yes.

5 Q. What type of geology was your study in?

6 A. A general geology degree.

7 Q. After college did you get some work?

8 Did you start working someplace?

9 A. Yes.

10 Q. Where did you first come to work?

11 A. Fuss & O'Neill, Incorporated.

12 Q. And where are they located?

13 A. Their corporate office is in
14 Manchester, Connecticut.

15 Q. And was that the office that you worked
16 out of?

17 A. Yes.

18 Q. And what kind of work is that, Fuss &
19 O'Neill?

20 A. They're engineering and environmental
21 consultants.

22 Q. And how long did you work for them?

23 A. Just under two years.

24 Q. And what kind of work did you do for

24

1 them?

2 A. I oversaw assessment and investigations
3 of contaminated or potentially contaminated
4 properties.

5 Q. Okay. And where were these properties
6 located, was it in the state of Connecticut or
7 were they in other places?

8 A. Mainly Connecticut.

9 Q. Okay. Now, when you started work for
10 them, did you have any specific training in the
11 investigation of contaminated properties and the
12 assessment of contaminated properties?

13 A. No.

14 Q. Okay. Were you being supervised by
15 somebody at that company?

16 A. Yes.

17 Q. So my question would be, when you would
18 go out -- Strike that.

19 How did you go about doing those
20 duties on a typical work site in the
21 approximately two years you were at Fuss &
22 O'Neill?

23 A. When I first started at Fuss & O'Neill,
24 I would mainly oversee field investigations. So

25

1 I would be on site either conducting the
2 sampling or overseeing other companies that were
3 conducting the work.

4 Q. Okay. Did I get the company name
5 wrong, is it Fuss & O'Neill?

6 A. That's correct.

7 Q. How did you know what to do in terms of
8 going to the site and directing other people or
9 taking samplings yourself?

10 A. Initially somebody else would be out on
11 the site with me training me.

12 Q. Okay.

13 A. Until the company felt that I was
14 knowledgeable enough to conduct the sampling on
15 my own.

16 Q. And how long was it before they let you
17 conduct samplings on your own?

18 A. Less than six months.

19 Q. Okay. And what types of hazardous
20 materials were you out there to assess and
21 investigate and supervise the work of?

22 A. A large range, a very large range of
23 oil and hazardous materials.

24 Q. Oil. What else? A large range doesn't

7 (Pages 22 to 25)

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1 help me a lot. I need to know specifically what
2 you were out there testing for and looking for
3 and supervising during the time that you were at
4 Fuss & O'Neill?

5 A. I could name the ones that I recall,
6 but they wouldn't be all of them.

7 Q. Okay. You don't get points off because
8 you can't remember all of them, but you get good
9 credit for giving me what you do remember.

10 So would you tell me which ones you
11 do remember even if there are some that you
12 can't remember?

13 A. Metals, volatiles, petroleum
14 constituents, solvents. That's what I recall.

15 Q. Okay. Was any of your work at that
16 time did it involve the demolition of buildings,
17 testing on sites on which buildings had been
18 recently demolished? And, again, I'm just
19 focusing on the two years that you were with the
20 Fuss & O'Neill people?

21 A. I don't recall.

22 Q. While you were at Fuss & O'Neill, were
23 you ever involved with the supervision of
24 asbestos removal?

27

1 A. No.

2 Q. Following the time you left Fuss &
3 O'Neill, I take it you left them sometime in
4 year 2000, 2001?

5 A. 2000.

6 Q. And did you obtain a new job

7 A. Yes.

8 Q. Where was that?

9 A. Goldman Environmental Consultants.

10 Q. And what was your new job with them?

11 A. Project manager, slash, geologist.

12 Q. Let me make sure I've exhausted this.

13 The work that you did for the approximately two
14 years for Fuss & O'Neill was to oversee
15 assessments and investigations with regard to at
16 least the hazardous materials you mentioned as
17 they were examined on the site; is that right?

18 A. Correct.

19 Q. Okay. Did you do any geology work?

20 A. Yes.

21 Q. What did you do?

22 A. Rock soil strata and bedrock strata.

23 Q. And what was the purpose of doing that,
24 please?

28

1 A. To determine lithology at sites.

2 Q. What is lithology?

3 A. The types of soils and bedrocks.

4 Q. Okay. And how did that contribute to
5 the hazardous waste work on a particular site,
6 how was that involved with the hazardous waste
7 testing on the site?

8 A. Lithology will impact the way that
9 contaminants travel.

10 Q. When you started work for Goldman
11 Environmental Consultants in the year 2000, do
12 you know approximately when in 2000 you started?

13 A. July.

14 Q. Okay. What assignments were you given
15 initially?

16 A. Both overseeing assessment and
17 investigation and remediation of sites and
18 conducting the Phase 1 investigations, 21Es.

19 Q. Now, 21E refers to what, Phase 1, 21E
20 refers to what?

21 A. 21E refers to a Phase 1 based on ASTM
22 standards.

23 Q. 21E, do you know what that number and
24 letter refer to?

29

1 A. I don't.

2 Q. How do you know what is included in a
3 Phase 1, 21E examination?

4 A. There are standards, ASTM 1527.

5 Q. Standards for what? What is the
6 subject matter? What are we talking about?

7 A. They identify the components that make
8 up the Phase 1.

9 Q. You realize that since you haven't told
10 me what Phase 1 is we're in a little bit of a
11 circle here. ASTM stands for what?

12 A. I believe it's Association of Standard
13 Testing Lithology.

14 Q. Okay. Well, three of the letters --
15 the first letter of those words match, but the
16 last letter, lithology doesn't match up with the
17 letter "M."

18 A. Methodology.

19 MR. BRAVERMAN: Why don't I
20 confer with the witness.

21 MR. ROBBINS: I was going to
22 suggest that.

23 (Brief break taken).

24 BY MR. ROBBINS:

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1 Q. Okay. so I'd like to pick up where we
2 were. We were talking about Phase 1, the Phase
3 1, 21E project. What is your understanding of
4 what a -- Strike that.
5 Do you know if a Phase 1, 21E test
6 or project is related to requirements for the
7 Commonwealth of Massachusetts or for the federal
8 government or both?
9 A. The 21E is related to Massachusetts
10 regulations.
11 Q. Okay. And what are the kinds of things
12 that you -- let me back up. What are the things
13 that are tested for or looked for in a Phase 1,
14 21E project as far as you understand it?
15 A. Typically a Phase 1 there's no
16 subsurface investigations conducted. It's
17 typically only observations and review of files
18 pertinent to the site to determine current and
19 historic uses of the site.
20 Q. Anything else as far as your
21 understanding to kind of flush out what these
22 are?
23 A. Based on the current and historic uses
24 of the site you determine if there's the

31

1 presence or the potential to be presence of OHM
2 at the site.
3 Q. Okay. Anything else that you want to
4 describe right now?
5 A. That's a broad description of what a
6 Phase 1 is.
7 Q. Okay. OHM, what do those letters stand
8 for?
9 A. Oil and hazardous material.
10 Q. Is it fair to say that a Phase 1, 21E
11 test -- would you call it a test or a program or
12 how would you describe it? I need some words.
13 How do we describe what the job is?
14 A. A report.
15 Q. A report?
16 A. A report which summarizes your
17 observations made.
18 Q. Okay. A report. Am I correct in
19 understanding that the thrust of a 21E is to
20 make sure there's no hazardous materials or oil
21 buried in the soil at the site?
22 MR. KERESTER: Objection to
23 form.
24 MR. BRAVERMAN: I object,

32

1 also.
2 Q. Okay. What is the purpose of the 21E
3 report?
4 A. To determine if OHM is present or could
5 potentially be present at the site?
6 Q. So to determine if OHM, which you've
7 said is oil and hazardous materials is or are
8 present or could potentially be present where,
9 in the soil, on the site?
10 A. Either on the site or in the subsurface
11 of the site.
12 Q. Now, you said before that no subsurface
13 investigations were part of a 21E report and
14 investigation?
15 A. Correct.
16 Q. And now you're saying, and I just don't
17 understand what you mean, that the oil and
18 hazardous materials could potentially be present
19 on the site or subsurface of the site.
20 I don't understand how if you're
21 not supposed to be doing subsurface
22 investigations as part of this, how do you
23 respond to the potential presence or actual
24 presence in the subsurface of the site?

33

1 A. You come to a conclusion that the
2 potential exists based on historic uses or
3 current uses that may have used OHM in their
4 processes.
5 Q. So if I understand you, there is no
6 actual, physical testing of a subsurface in a
7 Phase 1, but you examine historical uses of the
8 property and/or present uses of the property and
9 say there could be potential problems because
10 they had used these materials before?
11 A. Correct.
12 Q. Okay. But the limit is, you're limited
13 to basically historical and surface
14 observational data as far as subsurface
15 conditions?
16 A. And a review of any public records
17 pertinent to the site.
18 Q. Okay. Who buys a 21E report from
19 Goldman?
20 MR. BRAVERMAN: I object.
21 Q. Why does anyone request a 21E report
22 from Goldman typically?
23 MR. KERESTER: Objection.
24 A. A Phase 1 is typically conducted in

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34	<p>1 conjunction with a real estate transaction.</p> <p>2 Q. Okay. In order to assure the parties</p> <p>3 as to the condition or the presence of any OHM?</p> <p>4 MR. BRAVERMAN: I object.</p> <p>5 Q. Is that right?</p> <p>6 MR. KERESTER: Objection to</p> <p>7 form.</p> <p>8 MR. BRAVERMAN: I'll help</p> <p>9 you. I'm objecting to the word, "assure."</p> <p>10 MR. ROBBINS: Okay. Let's see</p> <p>11 if I can be more careful.</p> <p>12 MR. BRAVERMAN: I don't</p> <p>13 normally like to do that.</p> <p>14 MR. ROBBINS: You mean object.</p> <p>15 MR. BRAVERMAN: Well, I don't</p> <p>16 like to object if I don't have to, but I don't</p> <p>17 usually like to state the clarification of my</p> <p>18 objection.</p> <p>19 MR. ROBBINS: It's nothing</p> <p>20 toxic here. I'm just trying to get a handle on</p> <p>21 this thing.</p> <p>22 BY MR. ROBBINS:</p> <p>23 Q. So typically this occurs during or as</p> <p>24 part of a real estate transaction. How are</p>	36	<p>1 Q. Okay. Do you perform Phase 1 tests on</p> <p>2 behalf of Goldman Environmental?</p> <p>3 MR. BRAVERMAN: I object.</p> <p>4 MR. KERESTER: I also object.</p> <p>5 Q. Do you perform Phase 1 investigations</p> <p>6 on behalf of Goldman Environmental?</p> <p>7 A. Yes.</p> <p>8 Q. What do you do? What are the steps</p> <p>9 that you are required to take on -- per Goldman</p> <p>10 to complete a 2 Phase 1 test?</p> <p>11 MR. KERESTER: Objection.</p> <p>12 MR. BRAVERMAN: Objection.</p> <p>13 A. A site inspection, review of state and</p> <p>14 local files, a review of historical documents</p> <p>15 related to the site, interviews with current</p> <p>16 owners or operator's of the site. Those are the</p> <p>17 major ones that I recall. There are many more.</p> <p>18 Q. What are the minor ones?</p> <p>19 A. Determining what appears to be the</p> <p>20 hydrologic radiant of ground water, observing</p> <p>21 abutting properties. There is many more. I'm</p> <p>22 just -- I can't think of them off the top of my</p> <p>23 head.</p> <p>24 Q. Are you currently conducting any Phase</p>
35	<p>1 these 21E tests conducted?</p> <p>2 MR. KERESTER: Objection to</p> <p>3 form.</p> <p>4 MR. BRAVERMAN: I object.</p> <p>5 MR. ROBBINS: I think if we're</p> <p>6 reserving to the objection to form and you have</p> <p>7 an objection, you owe it to tell me what the</p> <p>8 objection is so that I can have a chance to</p> <p>9 correct it.</p> <p>10 MR. KERESTER: I don't think</p> <p>11 I'm obligated to, but I'd be happy to tell you.</p> <p>12 My objection to that question was to the</p> <p>13 characterization of the use of the word "test."</p> <p>14 (Brief break taken).</p> <p>15 BY MR. ROBBINS:</p> <p>16 Q. Do you know where the term Phase 1</p> <p>17 comes from?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you know if 21E -- your reference to</p> <p>20 the term 21E refers to a Massachusetts, a</p> <p>21 Commonwealth of Massachusetts regulation of some</p> <p>22 sort or statute of some sort?</p> <p>23 A. The 21 -- the statute 21E refers to</p> <p>24 Massachusetts regulations.</p>	37	<p>1 1 studies?</p> <p>2 A. No.</p> <p>3 Q. When is the last time you did a Phase 1</p> <p>4 study?</p> <p>5 A. Approximately three to five months ago.</p> <p>6 Q. Okay. Since coming to work for Goldman</p> <p>7 in 2000, July of 2000, how many Phase 1 studies</p> <p>8 have you either participated -- Strike that.</p> <p>9 How many Phase 1 studies have you</p> <p>10 conducted?</p> <p>11 A. I'd say over 100 probably.</p> <p>12 Q. Having conducted over 100, you're</p> <p>13 telling me today that there are other steps</p> <p>14 other than the six that you've listed, but you</p> <p>15 don't remember them; is that right?</p> <p>16 A. I don't recall them.</p> <p>17 Q. But there are other steps besides the</p> <p>18 six that you've given me?</p> <p>19 A. Yes.</p> <p>20 Q. Are the digging of test pits -- are you</p> <p>21 familiar with that term by the way?</p> <p>22 A. Yes.</p> <p>23 Q. Is the digging of tests pits any part</p> <p>24 of a Phase 1 study as you understand it?</p>

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<p>38</p> <p>1 A. No.</p> <p>2 Q. What state and local files do you</p> <p>3 review when you conduct a Phase 1 test?</p> <p>4 MR. KERESTER: Objection.</p> <p>5 Q. I'm sorry, Phase 1 study.</p> <p>6 A. The local files depends upon the town.</p> <p>7 Different towns have different names for</p> <p>8 different agencies. The Fire Department, Board</p> <p>9 of Health, Building Department and a clerk's</p> <p>10 office if the town has one.</p> <p>11 As far as Massachusetts or state</p> <p>12 files, there would be files maintained by the</p> <p>13 Massachusetts Department of Environmental</p> <p>14 Protection.</p> <p>15 Q. Is that it?</p> <p>16 A. Those are the typical offices.</p> <p>17 Occasionally a flood map or something or some</p> <p>18 other item that's specific to the Phase 1 might</p> <p>19 be kept in a different office.</p> <p>20 Q. Okay. You said review historical</p> <p>21 documents. What other historical documents are</p> <p>22 there that you review in a Phase 1 study?</p> <p>23 A. If they're available, you'd review</p> <p>24 Sanborn atlases and directories, historic</p>	<p>40</p> <p>1 purpose of that relative to the Phase 1 study?</p> <p>2 A. To determine if they have on record any</p> <p>3 incidents relating to oil or hazardous</p> <p>4 materials.</p> <p>5 Q. Okay. The Building Department records</p> <p>6 or files?</p> <p>7 A. To determine the history of the site,</p> <p>8 when buildings were constructed or demolished,</p> <p>9 past owners, occupants.</p> <p>10 Q. The clerk's office records or files?</p> <p>11 A. To determine if they have any</p> <p>12 documentation on underground storage tanks or</p> <p>13 above ground storage tanks.</p> <p>14 Q. Massachusetts DEP files?</p> <p>15 A. If there's any spill incidents or state</p> <p>16 sites either at the site or within a certain</p> <p>17 distance of the site. They would be assigned a</p> <p>18 release tracking number, which you would then</p> <p>19 review files pertinent to that release tracking</p> <p>20 number.</p> <p>21 Q. And the release tracking number has to</p> <p>22 do with what?</p> <p>23 A. It's a way for the state to track the</p> <p>24 site through their system.</p>
<p>39</p> <p>1 directories.</p> <p>2 Q. And the purpose of looking through the</p> <p>3 Sanborn atlases or historic directories is what?</p> <p>4 A. To determine historic occupants of the</p> <p>5 site. If STs were formally used at the site,</p> <p>6 they're sometimes shown on the Sanborn atlases.</p> <p>7 Q. Okay. Again, the purposes to go back</p> <p>8 to the state and local files that I asked you</p> <p>9 about. With regard to the Fire Department, what</p> <p>10 is the purpose concerning a Phase 1 study of</p> <p>11 reviewing Fire Department records or files?</p> <p>12 A. To determine if they have any records</p> <p>13 of current or historic use of USTs or ASTs at</p> <p>14 the site.</p> <p>15 Q. Okay. I need you to explain what is a</p> <p>16 UST?</p> <p>17 A. An underground storage tank.</p> <p>18 Q. Okay. And an AST?</p> <p>19 A. An above ground storage tank.</p> <p>20 Q. And sometimes Fire Department records</p> <p>21 would note these, is that what you're saying?</p> <p>22 A. Correct. Some fire departments</p> <p>23 maintain records.</p> <p>24 Q. The Board of Health, what is the</p>	<p>41</p> <p>1 Q. Do they track sites -- all properties</p> <p>2 or just properties where there is a spill or a</p> <p>3 hazardous waste problem?</p> <p>4 A. The release tracking number would be</p> <p>5 assigned -- there's different instances that it</p> <p>6 would be assigned. If there's -- there's</p> <p>7 different -- there's a two hour -- there's</p> <p>8 criteria that constitutes the owner or operator</p> <p>9 of the site. It requires them to notify the DEP</p> <p>10 of any release.</p> <p>11 There are certain standards and if</p> <p>12 they exceed those standards, they're obligated</p> <p>13 to report to the state.</p> <p>14 Q. You also indicated in your Phase 1</p> <p>15 study that you do interview the owners or</p> <p>16 operators of the site; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. What is the purpose of that?</p> <p>19 A. To determine the present use of the</p> <p>20 site and determine any operations that are</p> <p>21 currently conducted at the site, and sometimes</p> <p>22 they can provide you with historic operations of</p> <p>23 the site if they've been there for a while.</p> <p>24 Q. The interview, the purpose of the</p>

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1 interview -- the ultimate purpose of the
2 interview is to try to glean information, am I
3 correct, from the owner or operator relative to
4 any OHM problems on the site?

5 MR. KERESTER: Objection to
6 form.

7 A. That would be only one of many purposes
8 for interviewing them.

9 Q. Would you give me all of the purposes
10 that you understand for interviewing the owner
11 or operator of the property?

12 A. To determine the current use and
13 operations of the site, if they have knowledge
14 of historic owners or operations conducted at
15 the site, to determine if they have any
16 knowledge of historic use of OHM at the site, to
17 determine how their water -- how their water is
18 supplied, if it's through a portable well or a
19 public supply, what types of wastes are
20 currently historically generated at the site, if
21 they know or are aware of any improper disposal
22 or use of OHM at the site, to determine if they
23 know if there's any activity or use limitations
24 on the site.

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1 Q. Where would you look to determine what
2 the term "hazardous materials" consists of to
3 determine if a particular item was part of the
4 hazardous materials?

5 A. I don't recall.

6 Q. Do you understand my question?

7 A. Are you looking for a particular
8 document that you would refer to?

9 Q. Yes, I would.

10 A. I don't recall.

11 Q. Okay. Is there someplace that you go
12 to know what constitutes a hazardous material?

13 A. Yes.

14 Q. Okay. Where would you go?

15 A. I don't recall.

16 Q. Are you aware of whether there's a
17 definition of hazardous materials in any
18 regulations or statutes of the Commonwealth of
19 Massachusetts?

20 A. Can you repeat the question?

21 Q. Do you know whether or not there is any
22 definition of hazardous materials contained in
23 any of the regulations or statutes of the
24 Commonwealth of Massachusetts?

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1 To determine if there's ever been
2 any subsurface investigations conducted at the
3 site, to determine if there's other purposes.
4 Those are the key ones that come to the top of
5 my head at the moment.

6 Q. I'd like to know of any other
7 purposes. You've done 100 of these, or more
8 than a 100?

9 A. I don't recall any other purposes.

10 Q. But there are other purposes, you just
11 don't remember them?

12 A. Correct.

13 Q. Is one of the purposes to determine the
14 -- Strike that.

15 What is your overall purpose with
16 regard to doing a Phase 1 study, the overall
17 goal is to identify what?

18 A. Determine if there's any contamination
19 at the site or the potential for contamination
20 to be present at the site.

21 Q. And contamination, is that a technical
22 word, do you know? Contamination, does that
23 refer to certain specific things?

24 A. Oil and hazardous materials.

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1 A. Yes.

2 Q. Okay. So someplace in those rules or
3 statutes, the Commonwealth has defined the term
4 hazardous materials?

5 A. Yes.

6 Q. Do you know if that same term is
7 defined by any federal documents, rules,
8 statutes or regulations?

9 A. Yes.

10 Q. Okay. When you certify that a site is
11 free of oil and hazardous materials, that's part
12 of what you do at the end of your study if
13 that's the condition that you find it?

14 MR. BRAVERMAN: I object.

15 Q. Let me give you a better question.
16 Let's assume you find a site to be free of oil
17 and hazardous materials, and even accepting the
18 facts and understanding that you're not doing
19 any subsurface testing, do you make some sort of
20 a report to either Goldman or to the ultimate
21 client?

22 A. Correct.

23 Q. Okay. And you say I found -- I didn't
24 do any subsurface testing, but from the studying

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1 that I did do -- and you've described the
2 various things that you do -- I don't see any
3 oil or hazardous materials?
4 A. And make a conclusion saying based on
5 our findings, it's likely that hazardous or oil
6 is not present, is not present at the site.
7 Q. So your overall purpose is to ascertain
8 from your studies whether OHM exists on the site
9 or probably exists on the site?
10 MR. KERESTER: Objection to
11 form.
12 MR. BRAVERMAN: Objection.
13 A. Can we go back to the question before
14 that?
15 Q. Sure.
16 A. In a Phase 1 it would be if there's any
17 recognized environmental conditions.
18 Q. What does that mean, what are you
19 saying?
20 A. It's a specific term used in the ASTM
21 standards specific to Phase 1.
22 Q. And what is the phrase or term that
23 you're using?
24 A. Recognized environmental condition.

1 A. I'm not sure that I do.
2 Q. Okay. You do a phrase 1 study to
3 determine the presence or absence, or potential
4 presence or absence of OHM. Would you agree
5 with that?
6 A. Yes.
7 Q. Okay. Then you said, can I expand my
8 answer, and you gave me a new answer called
9 recognized environmental conditions.
10 A. Correct.
11 Q. Okay. I'm trying to understand whether
12 recognized environmental conditions is as you
13 understand it, a term broader than the presence
14 or -- the environmental conditions are broader
15 than OHM?
16 MR. KERESTER: Objection to
17 form.
18 MR. BRAVERMAN: I object.
19 Q. So does recognized environmental
20 conditions that you're supposed to study when
21 you do the Phase 1 study, is that supposed to
22 include anything but OHM?
23 MR. KERESTER: Objection.
24 MR. BRAVERMAN: I object.

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1 Q. And what does that phrase refer to, is
2 it recognize or recognized?
3 A. I believe it's recognized, E-D.
4 Q. And what is your understanding of that
5 term, what that means?
6 A. Conditions either current or historic
7 that resulted in or potentially could have
8 resulted in contamination at the site.
9 Q. Contamination by OHM?
10 MR. KERESTER: Objection.
11 Q. Contamination by what?
12 A. Of hazardous materials.
13 Q. And oil? And/or oil?
14 A. And/or oil.
15 Q. So that's OHM?
16 A. Yes.
17 Q. Okay. What I'm trying to find out is,
18 is it your understanding of this phrase,
19 recognized environmental conditions, does that
20 include environmental conditions beyond the
21 presence of OHM?
22 MR. KERESTER: Objection to
23 form.
24 Q. Do you understand my question?

1 A. An example of a recognized
2 environmental condition would be the historic
3 use of a site as a dry cleaners. The historic
4 documents that you review wouldn't necessarily
5 say that trichloroethylene or
6 tetrachloroethylene were historically used at
7 the site, but those chemicals are typically
8 associated with a dry cleaners. So the dry
9 cleaners itself would constitute a recognized
10 environmental condition.
11 Q. And the condition, if you will, the
12 risk of the condition is the presence of in your
13 example the dry cleaners, the presence of
14 trichloroethylene?
15 A. Correct, the potential for the historic
16 use or disposal of that at the site.
17 Q. So if a dry cleaner was there, they
18 might have used trichloroethylene and stuck it
19 in the ground, right?
20 A. Yes.
21 Q. Okay. Trichloroethylene is considered
22 a hazardous material under the definitions as
23 you understand OHM?
24 A. Yes.

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50	<p>1 Q. So ultimately any of the environmental</p> <p>2 conditions that you are reporting about in your</p> <p>3 Phase 1 study boil down to their actual or</p> <p>4 potential inclusion of oil or hazardous</p> <p>5 materials on the site?</p> <p>6 MR. KERESTER: Objection to</p> <p>7 form.</p> <p>8 A. I believe it would be a broader base</p> <p>9 than simply OHM.</p> <p>10 Q. Okay. What else is included besides</p> <p>11 OHM?</p> <p>12 A. If there's been any filling activities</p> <p>13 on the site, that would constitute an</p> <p>14 environmental condition, a recognized</p> <p>15 environmental condition.</p> <p>16 Q. What is a filling activity, what does</p> <p>17 that mean?</p> <p>18 A. If material not natural to the site had</p> <p>19 been brought on to the site and buried.</p> <p>20 Q. What kind of material?</p> <p>21 A. I would say any materials other than</p> <p>22 clean fill material, clean dirt.</p> <p>23 Q. Well, I need -- what is --</p> <p>24 interesting. So you're saying that the Phase 1</p>	52	<p>1 A. Yes.</p> <p>2 Q. Contamination. I thought that we</p> <p>3 defined contamination an hour and a half ago as</p> <p>4 oil and hazardous materials?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So am I correct that the</p> <p>7 contamination potential, the stuff in the fill</p> <p>8 that could cause the potential problem would be</p> <p>9 oil and hazardous materials?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Phase 1 does not include, am I</p> <p>12 correct, about understanding this from your</p> <p>13 testimony, any soil testing per say?</p> <p>14 A. Correct.</p> <p>15 Q. Is there such a thing as a Phase 2</p> <p>16 report?</p> <p>17 A. Yes.</p> <p>18 Q. Is there any physical testing done in a</p> <p>19 Phase 2 report that you understand?</p> <p>20 A. Typically there is.</p> <p>21 Q. Yes?</p> <p>22 A. Yes, typically.</p> <p>23 Q. You also determine the hydrologic</p> <p>24 radiant of ground water you indicated before in</p>
51	<p>1 study that you do goes beyond determining the</p> <p>2 presence or potential of oil or hazardous</p> <p>3 materials and also addresses the question of the</p> <p>4 nature of the fill at the site beyond whether it</p> <p>5 contains or potentially contains oil or</p> <p>6 hazardous materials, is that what you're saying?</p> <p>7 A. It identifies if there's any known</p> <p>8 historic fills at the site.</p> <p>9 Q. But what is the nature -- let's assume</p> <p>10 there were some known fillings. What are you</p> <p>11 looking for to say, okay, there's a problem</p> <p>12 here. What would be the problem, or what would</p> <p>13 be the thing that you would want to determine</p> <p>14 about that fill that you'd want to comment about</p> <p>15 in your study?</p> <p>16 A. Filling activities have occurred at the</p> <p>17 site. Whether you know the source of the fill</p> <p>18 material or not, the potential exists that what</p> <p>19 has been brought on the site could cause</p> <p>20 contamination at the site.</p> <p>21 Q. Okay. So your concern about the fill</p> <p>22 would be that it could potentially cause</p> <p>23 contamination at the site. Did I quote you</p> <p>24 right?</p>	53	<p>1 a Phase 1 study; is that right?</p> <p>2 A. To the best that you can. It won't be</p> <p>3 definitive, but based on topography or USGS</p> <p>4 maps, you can get a pretty good handle on which</p> <p>5 way the direction of ground water is flowing.</p> <p>6 Q. But no physical testing is performed to</p> <p>7 determine this?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And you indicated that you</p> <p>10 observe abutting properties. What is it that</p> <p>11 you are looking to observe for purposes of a</p> <p>12 Phase 1 study?</p> <p>13 A. You would observe the abutting</p> <p>14 properties to see if there's any evidence of OHM</p> <p>15 at those sites that could potentially migrate on</p> <p>16 the site that you're conducting the Phase 1 for.</p> <p>17 Q. Okay. And your observations -- Strike</p> <p>18 that.</p> <p>19 Does the work that you do with</p> <p>20 regard to abutting properties also include the</p> <p>21 other items that you said you do on the primary</p> <p>22 property, namely a site inspection or review of</p> <p>23 state and local files or review of the</p> <p>24 historical documents, interviews with owners,</p>

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<p>54</p> <p>1 determination of hydrologic radiants and 2 observing the property itself? 3 A. No. 4 Q. Okay. So with regard to abutting 5 property, what are the steps that you take in 6 completing that part of your Phase 1 study? 7 A. You make observations of the abutting 8 properties from the site that you're conducting 9 the Phase 1 on from the public roadway, but you 10 don't actually, physically go onto the abutting 11 properties. 12 Q. Okay. So you're talking about visual 13 observations? 14 A. Of the grounds and of the abutting 15 property. 16 Q. What else? 17 A. If there is a state listed site, you 18 would review and have a release tracking 19 number. You would review that file at the 20 Massachusetts Department of Environmental 21 Protection. 22 Q. That's of this abutting property? 23 A. Correct. 24 Q. Okay.</p>	<p>56</p> <p>1 supervisory or oversight functions when they 2 retained an abatement company to perform work on 3 a particular location? 4 A. Their involvement would be limited to 5 overseeing the company that conducts the work, 6 making arrangements for access to the site. 7 Those types of matters. They wouldn't 8 physically be involved in the testing or 9 abatement process. 10 Actually, just to clarify that, the 11 only time that we would analyze or potentially 12 analyze for asbestos would be through the 13 collection of ground water or soil samples. We 14 would send them to a certified lab, but we don't 15 collect building materials or anything of that 16 nature for asbestos analysis. 17 Q. So I'm a little confused. You collect 18 samples of what? If it's not building 19 materials, samples of what? 20 A. Soil or ground water. 21 Q. As opposed to a ceiling tile let's say? 22 A. Correct. Unless the ceiling tile would 23 be incorporated into a soil matrix, a film 24 matrix that you might be digging or drilling</p>
<p>55</p> <p>1 A. And you would look at the Fire 2 Department and clerk's office to see if there's 3 any records of underground or above ground 4 storage tanks relative to those abutting 5 properties? 6 Q. Okay. Anything else? 7 A. No. 8 Q. So it's fair to say that the study of 9 the abutting property does a more limited study 10 than the one on the private property? 11 A. Yes, very much. 12 Q. Are you qualified -- Strike that. 13 Have you ever conducted or 14 supervised any asbestos removal work? 15 A. No. 16 Q. Does Goldman get involved in any way 17 with asbestos problems on a site? 18 A. Yes. 19 Q. How do they get involved when they do? 20 A. They'll contract a company certified 21 with the knowledge of asbestos to either collect 22 samples or conduct an abatement, if that's 23 required. 24 Q. Okay. And does Goldman perform any</p>	<p>57</p> <p>1 through for subsurface activities. 2 Q. So not in a Phase 1 study, but 3 sometimes Goldman would do digging of test pits 4 on a particular site, subsurface digging in 5 other words? 6 A. Correct. 7 Q. And then it might take samples from 8 that and have them analyzed someplace? 9 A. By a certified laboratory. 10 Q. And doing that kind of digging of pits, 11 would that normally be part of any particular 12 kind of a study that Goldman does, or is it just 13 somebody says to Goldman, come on in. We want 14 you to dig some pits in the ground? 15 A. Typically you wouldn't sample for 16 asbestos unless somebody hired you to do so, or 17 there was reason to believe based on historic 18 use or operation of the site that asbestos could 19 potentially be present in the subsurface. 20 Q. But it's not part of a Phase 1 study? 21 A. No, it's not. 22 Q. Is it typically part of a Phase 2 23 study? 24 A. It could be part of a Phase 2 study.</p>

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1 Q. I should have asked you this earlier.
2 Have you ever conducted or participated in a
3 Phase 2 study?
4 A. Yes.
5 Q. Approximately how many times would that
6 be since you started work for Goldman?
7 A. Over 100.
8 Q. So you consider yourself pretty
9 familiar with that kind of work?
10 A. Yes.
11 Q. And with Phase 1 work, too?
12 A. Correct.
13 Q. Did you participate in a Phase 1 study
14 at a property in Lynn, Massachusetts called 200
15 Union Street?
16 A. Yes.
17 MR. BRAVERMAN: Before we move
18 into the specific project, would this be a good
19 time for a short break?
20 MR. ROBBINS: Absolutely.
21 (Lunch Recess taken).
22 BY MR. ROBBINS:
23 Q. I'm going to show you a pile of
24 documents that I'll represent are exactly how I

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1 (Exhibit No. 55 received and
2 Marked for identification).
3 Q. I've taken some documents and photo
4 copied them from this Exhibit 55, and I'd like
5 to ask you some questions about some of them.
6 When did you first become aware of
7 a Phase 1 study to be done at what is called
8 190-200 Union Street?
9 A. April or May of 2002.
10 Q. How did you become aware of it?
11 A. I don't recall.
12 Q. Did somebody speak to you, did your
13 supervisor speak to you, did somebody hire up at
14 Goldman speak to you and say we have a project
15 that we want you to work on?
16 A. I don't recall the exact details.
17 Q. When was the first time that you went
18 to the site?
19 A. May 2nd, 2002.
20 Q. Okay. And your intention of going to
21 the site was to conduct a Phase 1 study; is that
22 correct?
23 A. To conduct a site inspection of the
24 property that I was doing a Phase 1 study on.

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1 received them in this box from counsel, and
2 appear to have an affidavit on the front of
3 them.
4 And while we haven't numbered the
5 pages and so forth, I'd like to ask you is that
6 your signature on the sheet?
7 A. Yes.
8 Q. Okay.
9 A. A copy of it.
10 Q. Right. And your intention in signing
11 your name on that sheet was what, why did you
12 sign it?
13 A. To indicate that I had copied all of
14 the files pertinent to 200 Union Street in Lynn
15 and that they're copies of documents produced by
16 Goldman Consultants, Inc.
17 Q. And these are true copies of the
18 business records of Goldman that you've selected
19 as relevant to or concerning the 200 Union
20 Street?
21 A. Correct.
22 Q. Okay.
23 MR. ROBBINS: So why don't we
24 put a sticker on that.

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1 Q. So the overall purpose was a Phase 1
2 study, the specific purpose was a site
3 inspection?
4 A. Correct.
5 Q. And the point of a Phase 1 study on
6 this property was to determine the presence of
7 oil or hazardous materials?
8 MR. KERESTER: Objection to
9 form.
10 MR. BRAVERMAN: I object.
11 MR. KERESTER: I'm objecting
12 in part to the leading nature of the question.
13 MR. ROBBINS: She already said
14 that -- okay. I'll let that sit.
15 Q. You can answer the question.
16 A. Could you repeat the question?
17 MR. ROBBINS: Thank you for
18 letting me know what your objection was.
19 (Last question read back).
20 Q. I said the purpose -- I'm going to
21 amend the question slightly.
22 Your purpose and Goldman's purpose
23 for conducting a Phase 1 study on this property
24 was to determine, was it not, the presence or

16 (Pages 58 to 61)

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<p>62</p> <p>1 potential presence of oil and/or other hazardous 2 materials?</p> <p>3 MR. KERESTER: Objection. 4 MR. BRAVERMAN: I object.</p> <p>5 A. The purpose of the Phase 1 was to 6 determine if there was any recognized 7 environmental conditions as defined by the ASDM 8 standard.</p> <p>9 Q. And did we not decide in discussing 10 this this morning that the recognized 11 environmental conditions phrase, in fact, means 12 under this, potential presence of oil and/or 13 hazardous materials?</p> <p>14 MR. KERESTER: Objection. 15 MR. BRAVERMAN: I object.</p> <p>16 Q. I thought that's what you told me this 17 morning.</p> <p>18 MR. KERESTER: Objection. 19 MR. BRAVERMAN: I object.</p> <p>20 A. Could you repeat the question? 21 Q. Let me give you a different question. 22 We're going to go back over this until I get it 23 clear. 24 What is your understanding of the</p>	<p>64</p> <p>1 materials, the improper disposal of solid 2 waste. Is that what you're adding?</p> <p>3 A. Correct. 4 Q. And presumably by default, the improper 5 disposal of oil or hazardous materials?</p> <p>6 MR. KERESTER: Objection to 7 form, 8 A. Well, the improper disposal of solid 9 waste on its own, regardless of whether there's 10 contaminant present or not would constitute a 11 recognized environmental condition. 12 Q. I'm sorry, would you say that again? I 13 didn't follow you. 14 A. The improper disposal of solid waste 15 would constitute a recognized environmental 16 condition regardless of if that solid waste 17 contained oil or hazardous materials. 18 Q. Okay. Now, I haven't heard you use the 19 term solid waste before right now; so would you 20 tell me what you mean by solid waste? 21 A. Solid waste could include garbage, 22 trash, building materials. I believe it could 23 include asphalt and concrete, although I'm not a 24 specialist when it comes to solid waste</p>
<p>63</p> <p>1 phrase, recognized environmental conditions as 2 defined by ASM 1527? What does it mean to you?</p> <p>3 MR. BRAVERMAN: I object. 4 A. A condition past or present or an 5 activity that has occurred at the site, past or 6 present, that has the potential to contaminate 7 the site. 8 Q. Contaminate the site with what? 9 A. Oil and hazardous materials. It could 10 also encompass improper disposal of solid waste 11 or oil and hazardous materials. 12 Q. Does that finish your answer? Have you 13 had enough time to finish it? 14 A. Yes. 15 Q. So your answer is finished? 16 A. Yes. 17 Q. So conditions past or present or an 18 activity past or present that actually has the 19 potential to contaminate the site with oil 20 and/or hazardous materials. Did I get that part 21 right so far? I'm not finished, but so far am I 22 right with that answer? 23 A. Yes. 24 Q. And in addition to oil and hazardous</p>	<p>65</p> <p>1 regulations. 2 Q. Can solid waste include anything else? 3 A. Yes. 4 Q. What else? 5 A. I don't recall. 6 Q. Are there regulations or statutes in 7 the Commonwealth of Massachusetts that define 8 for you what solid waste consists of? 9 A. Yes. 10 Q. Where would you find those? 11 A. In the Massachusetts Code of 12 Regulations. I don't recall the specific 13 portion of the regs that I would look to. 14 Q. And the identification of solid waste 15 disposal is part of your Phase 1 study; is that 16 correct? 17 A. How is it or is it? 18 Q. Is it? 19 A. Yes. 20 Q. Is that part of a Phase 1 study? 21 A. Yes. 22 Q. Okay. What are the steps that you take 23 to identify when you do a Phase 1 study the 24 presence or absence of solid waste or the</p>

17 (Pages 62 to 65)

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1 potential presence or absence of solid waste on
2 the site?

3 A. Questioning people, either operators or
4 owners who are familiar with the site as to how
5 solid waste generated at the site is disposed,
6 walking over the site to see if there's any
7 unusual mounds that might be associated with
8 filling activities. Also, reviewing files
9 maintained by Mass. DEP. If the site had been a
10 solid waste landfill at one point, it would be
11 identified in those files.

12 Q. Any other steps?

13 A. Those would be the steps that I would
14 take.

15 Q. Now, when you gave me a list of what
16 you understood or what you remembered as solid
17 waste items, you mentioned garbage. When you
18 say garbage, what do you mean by garbage?

19 A. Wrappers, boxes, things that you would
20 generate and throw out that you would no longer
21 have use for.

22 Q. That could be anything from a car to a
23 piece of food or all sorts of things. That's a
24 very broad definition, or is it your intention

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1 Q. Then you said asphalt and concrete, but
2 you said you weren't an expert in the area of
3 asphalt or concrete. I didn't quite remember
4 what you said.

5 A. I don't recall if asphalt and concrete
6 are included in the Massachusetts regulations.
7 I'd have to refer to the regulations.

8 Q. So you don't know whether they're
9 included or not?

10 A. Correct.

11 Q. Okay. And then you said there are
12 others that you don't remember?

13 A. Correct.

14 Q. Are there other types of items?

15 A. Yes.

16 Q. Do you know if bricks are among or
17 under Massachusetts regulations defined as solid
18 waste?

19 A. I don't recall.

20 Q. By whom was Goldman retained by this
21 project at this address?

22 MR. KERESTER: Objection to
23 form.

24 A. I believe the client was Envirotest.

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1 to include garbage essentially as anything that
2 could be thrown out?

3 A. I would say that garbage would be a
4 broad definition and would include anything that
5 could be thrown out.

6 Q. So that's your understanding of what
7 garbage means under this definition of solid
8 waste in Massachusetts?

9 A. Yes.

10 Q. How about trash, what is your
11 understanding of the definition of trash under
12 the Massachusetts regulations?

13 A. I would say it would be the same as
14 garbage.

15 Q. Okay. So trash and garbage is
16 essentially the same?

17 A. Yes.

18 Q. Building materials, what is that? What
19 is your understanding of Massachusetts
20 definition for that?

21 A. It could be wood, metal, plaster,
22 concrete, drywall, floor tiles, carpet, anything
23 that you would use in the construction of a
24 building.

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1 Q. And what is Envirotest?

2 A. I'm not certain.

3 Q. Is it a business?

4 A. I believe it's a laboratory, but I'm
5 not 100 percent on that. I know it's a
6 business, but I don't know.

7 Q. Have you ever dealt with any
8 individuals from Envirotest in your work?

9 A. Not other than on this project.

10 Q. Okay. But yes at this project?

11 A. Yes.

12 Q. Do you remember the names of any of the
13 people at this project from Envirotest with whom
14 you had any contact?

15 A. I don't recall without looking at who
16 the report is addressed to.

17 Q. Okay. What were you told your
18 responsibilities were on this project?

19 A. I don't recall.

20 Q. Did someone tell you to do a Phase 1
21 study?

22 A. I don't remember.

23 Q. Do you know who the ultimate client
24 was? In other words, the owner of the piece of

18 (Pages 66 to 69)

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1 property that you were doing the report on?
 2 A. Bill Gateman was the owner of the site.
 3 Q. Okay. Are you familiar with the name
 4 of a business called Family Dollar?
 5 A. Not in the context of this project.
 6 Q. In what context?
 7 A. As a business. I know there's a
 8 business named Family Dollar.
 9 Q. So someone whom you don't remember
 10 gives you the assignment to do a Phase 1 study
 11 at this 200 Union Street address in Lynn back in
 12 approximately April or May of 2001. I think you
 13 said?
 14 MR. KERESTER: I believe she
 15 said 2002.
 16 A. Yes, 2002.
 17 Q. Have I got the story right so far,
 18 someone gave you an assignment to do a Phase 1?
 19 A. Correct.
 20 Q. Okay. The first time you went to the
 21 site, were you by yourself or were you with
 22 someone else?
 23 A. I was by myself.
 24 Q. What did you do when you got there?

1 this project or this location?
 2 A. No. Those aren't just specific to the
 3 site inspection. Those are notes that I look
 4 during all aspects of the Phase 1.
 5 Q. Were you there for any other purpose
 6 other than a Phase 1?
 7 A. Those include notes that I would have
 8 taken from the town offices and things like
 9 that.
 10 Q. You would have because you were
 11 conducting a Phase 1 study?
 12 A. Yes.
 13 Q. So whatever the source of the
 14 information is that you put into these notes, it
 15 was all part of the same project, a Phase 1
 16 study; is that correct?
 17 A. Yes.
 18 Q. Okay. And subject to perhaps some
 19 correction, this is all of them, subject to
 20 finding a missing sheet or whatnot?
 21 MR. BRAVERMAN: I don't know
 22 whether you would consider those notes, anything
 23 written in her hand pertaining to the Phase 1
 24 study.

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1 A. I don't recall all of the things that I
 2 did when I was there, but I recall walking the
 3 site and interviewing Mr. Gateman based on my
 4 field notes. I don't recall the actual
 5 conversation itself.
 6 Q. Okay. When you got there I was about
 7 to ask you, what is it -- do you keep a notebook
 8 of the work that you do in connection with the
 9 Phase 1?
 10 A. I would take notes, but not in a
 11 specific notebook.
 12 Q. You would take notes. You would write
 13 notes down on a piece of paper?
 14 A. Correct.
 15 Q. Do I have those pieces of paper of the
 16 notes that you wrote in Exhibit 55?
 17 A. Yes.
 18 Q. Would you find them for me?
 19 A. (Witness complying).
 20 Q. These sheets that you're handing me,
 21 these are all of your notes?
 22 A. Relative to the Phase 1.
 23 Q. Right. And are there notes that you've
 24 made relative to anything besides the Phase 1 at

1 (Exhibit No. 55A received and
 2 Marked for identification).
 3 Q. This initial form on top of Exhibit
 4 55A, is that a Goldman form that's used for
 5 Phase 1s?
 6 A. Yes.
 7 Q. You've seen that form before?
 8 A. Yes.
 9 Q. And that's your handwriting on that
 10 form, right?
 11 A. Yes.
 12 Q. In other words, your handwriting is
 13 someplace on every document that's in this 55A,
 14 right?
 15 A. At some point, yes.
 16 Q. Okay. I'd like to ask you -- actually,
 17 let me pull this out so you can look at that.
 18 This first form in 55A has at the
 19 top the name of site inspection form. Do you
 20 see that?
 21 A. Yes.
 22 Q. Inspected by LMM?
 23 A. Correct.
 24 Q. That's you?

19 (Pages 70 to 73)

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1 A. Yes.	1 Q. Okay. What other kind of people were
2 Q. And this was done on May 2, '02?	2 working there? What was going on with these
3 A. Yes.	3 other people?
4 Q. Okay. And it was raining I take it?	4 A. I don't recall.
5 A. Yes.	5 Q. So you recall there were some people
6 Q. On this you've written various things,	6 there, but you don't recall what they were
7 including on site history. You say, "Bill	7 doing?
8 Gateman stated commercial store different times	8 A. I recall there was heavy equipment on
9 in the past 50 years." A little line up to	9 the site. I recall that they were operating,
10 "Gateman has owned property since 1997."	10 but I don't recall the exact activities that
11 Did I read that right?	11 they were doing.
12 A. It states, "Bill Gateman stated	12 Q. And when you got there, would you
13 commercial store approximately past 50 years."	13 describe what the site looked like and in
14 Q. Okay.	14 particular -- describe what the site looked
15 A. "Has owned property since 1997."	15 like.
16 Q. Okay. Now, I can't read this. There's	16 A. I don't recall all the details, but I
17 some writing just below that. On my copy it	17 remember there being no vegetation, debris
18 doesn't show up. Can you tell me what the	18 piles, a couple of pieces of heavy equipment on
19 writing below that is?	19 the site. That's what I recall.
20 A. No.	20 Q. Okay. Did you see any trucks?
21 Q. Did you see there's some writing	21 A. I don't recall.
22 there? It's too faint.	22 Q. Was the building standing at all or had
23 A. No.	23 it all been leveled down, knocked down?
24 Q. So when you wrote that down there,	24 A. The basement foundation was remaining.
75	77
1 "Bill Gateman stated," that's your notes or are	1 Q. Did you see any building above the
2 you quoting him? In other words, is that an	2 basement foundation level?
3 exact quote of the words that he said?	3 A. No.
4 A. I don't recall.	4 Q. So was the level of the site all
5 Q. Okay. But it's your notes summarizing	5 leveled up to the street level?
6 at least what he said?	6 MR. KERESTER: Objection to
7 A. Yes.	7 form.
8 Q. Okay. Now, down at the bottom it says	8 A. No.
9 current use. Do you see that?	9 Q. What was the topography or elevation on
10 A. Yes.	10 the site when you got there on May 2 that you
11 Q. Would you read what you've written in	11 observed?
12 there, please?	12 A. They were very irregular. I mean,
13 A. "Vacant building has been demolished --	13 there was a drop off into a basement area.
14 currently demolition debris piles at the site --	14 Q. Anything else?
15 per Mr. Gateman, all will be removed/disposed.	15 A. That's what I recall.
16 Former basement areas currently being filled	16 Q. Was any part of it at the level of the
17 in."	17 street?
18 Q. When you were there, were there any	18 A. Within a foot of the street I would
19 other people besides you and Mr. Gateman working	19 say.
20 at the property?	20 Q. Okay. And there was some area that
21 A. Yes.	21 went down to a basement level you said?
22 Q. Were these the asbestos abatement	22 A. Yes.
23 people?	23 Q. Okay. And then when you said there
24 A. No.	24 were debris piles, what do you mean by debris

20 (Pages 74 to 77)

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<p>1 piles?</p> <p>2 A. I don't recall specifics of the debris</p> <p>3 piles.</p> <p>4 Q. So do you remember any of the items</p> <p>5 that composed these debris piles?</p> <p>6 A. Not unless I refer to the notes that I</p> <p>7 took on that day.</p> <p>8 Q. Okay. So I assume that those notes</p> <p>9 would be part of 55A?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you keep private notes or</p> <p>12 personal notes with regard to your work</p> <p>13 assignments?</p> <p>14 A. No.</p> <p>15 Q. Okay. So no private diary or log with</p> <p>16 notes?</p> <p>17 A. No.</p> <p>18 Q. So everything you've written in your</p> <p>19 hand with regard to gathering information and in</p> <p>20 general with regard to this project is in this</p> <p>21 55A as far as you know?</p> <p>22 A. Yes.</p> <p>23 Q. So could you find notes in there?</p> <p>24 Would you look through those and tell me if you</p>	<p>1 A. On the second page of the second</p> <p>2 document in Exhibit 55A. And just to orient me</p> <p>3 -- I may have it.</p> <p>4 There's some notes that look like</p> <p>5 they're on lined paper with the date of 5/2/02</p> <p>6 on the upper left.</p> <p>7 A. Yes, site inspection.</p> <p>8 Q. And this is, "12 o'clock meet Bill</p> <p>9 Gateman."</p> <p>10 A. Correct, on the second page of that.</p> <p>11 Q. Thank you.</p> <p>12 A. About midway down it says, "current</p> <p>13 conditions of site."</p> <p>14 Q. Okay.</p> <p>15 A. Indicates metal and debris piles.</p> <p>16 Q. Okay. So that refreshes you that there</p> <p>17 was some metal in the debris pile?</p> <p>18 A. Correct.</p> <p>19 Q. Anything else in your notes that would</p> <p>20 tell you what else is in it, it being the debris</p> <p>21 piles?</p> <p>22 A. No.</p> <p>23 Q. And you don't independently today</p> <p>24 remember what was in the piles other than metal</p>
79	81
<p>1 can refresh your memory as to what was in the</p> <p>2 debris piles?</p> <p>3 A. (Witness viewing document.) Demolition</p> <p>4 debris and metal.</p> <p>5 Q. And where did you find that, please?</p> <p>6 A. The second page of the inspection, site</p> <p>7 inspection form.</p> <p>8 Q. Okay.</p> <p>9 A. Under site exterior portion, debris</p> <p>10 piles.</p> <p>11 Q. Does that answer what I asked you, do</p> <p>12 you think? I asked you if you could find</p> <p>13 anything that would refresh your memory as to</p> <p>14 what the debris piles were composed of, what is</p> <p>15 in them? Circle "Y" I assume means yes, and</p> <p>16 then it says, demolition debris, but we knew</p> <p>17 that from the first page that you said there was</p> <p>18 demolition debris.</p> <p>19 My question was, what was in the</p> <p>20 pile, not whether or not there was a pile, and</p> <p>21 if you could refresh your memory from looking at</p> <p>22 your notes as to what the contents of the pile</p> <p>23 was?</p> <p>24 MR. KERESTER: Objection.</p>	<p>1 which you were refreshed on?</p> <p>2 A. I recall wood.</p> <p>3 Q. Anything else that you remember?</p> <p>4 A. That's all that I recall.</p> <p>5 Q. And when you say metal, do you know</p> <p>6 what kind of metal? I don't mean the nature of</p> <p>7 whether it was iron or steel, but what was the</p> <p>8 shape or what was it used for, do you know any</p> <p>9 details about the metal?</p> <p>10 A. I don't recall.</p> <p>11 Q. And with regard to the wood, was it</p> <p>12 wood from roots or from trees, was it finished</p> <p>13 wood and what size was this wood?</p> <p>14 A. I recall it was wood that you would use</p> <p>15 as building materials, but I don't recall sizes.</p> <p>16 Q. Okay. I understand. Now, when you --</p> <p>17 MR. ROBBINS: I'm sorry?</p> <p>18 MR. BRAVERMAN: I'm not going</p> <p>19 to interfere. Go ahead.</p> <p>20 MR. ROBBINS: Did I do</p> <p>21 something wrong?</p> <p>22 MR. BRAVERMAN: No, not at</p> <p>23 all.</p> <p>24 (Discussion held off</p>

21 (Pages 78 to 81)

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1	the record).	1	so that 55 should now be complete with all of
2	Q. "Per Mr. Gateman, all will be removed,	2	the originals, including some color photographs
3	slash, disposed." End quote. Do you see that?	3	and a large bound set of documents, which were
4	A. Yes.	4	tabbed in gray and appear to consist of Phase 1
5	Q. Okay. Is that a direct quote from him,	5	materials.
6	the exact words he said, all will be	6	Did I state that clearly enough for
7	removed/disposed, or is that your summary of	7	everybody's satisfaction, or does anybody want
8	your conversation and understanding?	8	to add anything?
9	A. I don't recall.	9	MISS ENGBERG: No, I think
10	Q. Okay. Did you review these records	10	that's fine.
11	that have been produced today and marked as	11	MR. KERESTER: As I understand
12	Exhibit 55? Did you review the records that	12	it now, Exhibit 55 contains the original package
13	were produced as Exhibit 55 in total?	13	that you received, the FedEx delivery from
14	A. I reviewed a portion of the records	14	Goldman in response to the subpoena?
15	that I was involved in.	15	MR. ROBBINS: That's correct,
16	Q. And what portion was that?	16	it now contains everything that I got.
17	A. The Phase 1 activities.	17	MR. BRAVERMAN: Well, not
18	Q. So that would have included your notes?	18	quite because you still have the unmarked
19	A. Yes.	19	original certification from Goldman of the
20	Q. And that would have included the report	20	authenticity of the documents.
21	that was created and had your signature on it?	21	MR. ROBBINS: Which previously
22	A. Yes.	22	we decided was not an important --
23	Q. Okay. Did you look at any photographs	23	MR. KERESTER: Right, with the
24	that were produced?	24	limited exception that the single sheet
83		85	
1	A. Yes.	1	constituting the certification, Exhibit 55 does
2	Q. Did you take any photographs of that	2	now constitute the original of a package that
3	scene of that site as part of your Phase 1	3	you received, and 55 also includes a copy of
4	activities?	4	that certification.
5	A. Yes.	5	MR. ROBBINS: Correct. Is
6	Q. You did?	6	counsel satisfied with that, or do we want to
7	A. Yes.	7	remark the original Certification?
8	Q. Can we pull out the set of color	8	MR. KERESTER: I'm satisfied.
9	photographs?	9	MISS ENGBERG: That's fine
10	MR. BRAVERMAN: I only saw the	10	with me.
11	black and white ones in this group. I thought	11	MR. BRAVERMAN: I have no
12	we produced some color photographs.	12	interest.
13	MR. ROBBINS: I thought I just	13	MR. KERESTER: For clarity
14	saw them.	14	purposes, why don't we mark that as 56 just so
15	(Discussion held off	15	there's no doubt about it.
16	the record).	16	MR. BRAVERMAN: The original
17	MR. ROBBINS: Through in	17	certification. You might need it later, so
18	attention, defense counsel has in some cases put	18	that's not a bad idea.
19	photocopied copies of the original documents	19	MR. ROBBINS: Works for me.
20	provided by Goldman into the pile that was	20	(Exhibit No. 56 received and
21	identified collectively as Exhibit 55.	21	Marked for identification).
22	We've now determined that that	22	BY MR. ROBBINS:
23	problem happened and have swapped the true	23	Q. Did you take any photographs yourself
24	original production for the secondary photocopy	24	of the Union Street property that you were doing

22 (Pages 82 to 85)

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<p>1 the Phase 1 on?</p> <p>2 A. Yes.</p> <p>3 Q. Are these the photographs that you took</p> <p>4 in front of you, or copies of them?</p> <p>5 A. Yes.</p> <p>6 Q. And did you take photographs other than</p> <p>7 the six that are contained in those</p> <p>8 reproductions?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 MR. ROBBINS: Let's mark that as</p> <p>12 55B, please.</p> <p>13 (Exhibit No. 55B received and</p> <p>14 Marked for identification).</p> <p>15 Q. Do the originals of these photographs</p> <p>16 still exist someplace?</p> <p>17 A. They were digital photographs.</p> <p>18 Q. So is there -- do the digital files</p> <p>19 representing these files exist someplace?</p> <p>20 A. Yes.</p> <p>21 Q. Where, on Goldman's server?</p> <p>22 MR. KERESTER: I think you</p> <p>23 were provided digital copies of these files.</p> <p>24 MR. ROBBINS: I know I was.</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. What was your intention of</p> <p>3 putting that phrase in there? Why is that</p> <p>4 there?</p> <p>5 A. The client that had hired us to conduct</p> <p>6 the Phase 1.</p> <p>7 Q. Okay. So would you show me in these --</p> <p>8 and I'll ask you to look at each one in turn --</p> <p>9 the so-called debris piles, the demolition</p> <p>10 debris piles that you were referring to?</p> <p>11 A. Yes.</p> <p>12 Q. Are the pictures numbered in any way to</p> <p>13 distinguish them by a number?</p> <p>14 A. No.</p> <p>15 Q. Okay. We'll see if we have to mark</p> <p>16 anything, but on the first page do you see any</p> <p>17 of the debris that you were referring to before?</p> <p>18 A. The second picture on the first page.</p> <p>19 Q. All right. Does anybody have a problem</p> <p>20 with her marking in the margin the letter "A,"</p> <p>21 let's say?</p> <p>22 MR. KERESTER: No, that's</p> <p>23 fine.</p> <p>24 Q. Just a capital Letter "A" would be</p>
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<p>1 Thank you.</p> <p>2 Q. The descriptions that are typewritten</p> <p>3 underneath the photographs, who put those on</p> <p>4 there?</p> <p>5 A. I did.</p> <p>6 Q. Okay. So you wrote out those</p> <p>7 descriptions?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And what is the numbering</p> <p>10 system? At the beginning of the photograph</p> <p>11 there is a number.</p> <p>12 A. That's the job number designated by</p> <p>13 Goldman.</p> <p>14 Q. Which part of that is the job number?</p> <p>15 A. 958-2080.</p> <p>16 Q. And these pictures were taken on May</p> <p>17 2nd?</p> <p>18 A. Yes.</p> <p>19 Q. Did you look at these pictures before</p> <p>20 coming here today?</p> <p>21 A. Yes.</p> <p>22 Q. The first words that you have after the</p> <p>23 filing number says, "Envirotest Laboratories";</p> <p>24 is that right?</p>	<p>1 fine.</p> <p>2 A. (Witness complying).</p> <p>3 Q. So on Photograph A on this page you</p> <p>4 were pointing to the sort of mound on the center</p> <p>5 of the picture as the debris picture?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see anything in the other</p> <p>8 picture that represents any of the debris piles?</p> <p>9 A. No.</p> <p>10 Q. Okay. would you go to Page 2 of the</p> <p>11 sheets. Would you look at each of the two</p> <p>12 pictures on there and tell me if you see any</p> <p>13 debris piles in either one?</p> <p>14 A. In both of the pictures.</p> <p>15 Q. Would you look at each picture. For</p> <p>16 each of the six pictures, would you identify any</p> <p>17 debris pile that you find shown in the picture</p> <p>18 when you said before when you talked about</p> <p>19 debris with Mr. Gateman?</p> <p>20 A. In the top picture on Page 2.</p> <p>21 Q. Okay. Would you point to where the</p> <p>22 debris is?</p> <p>23 A. (Indicating).</p> <p>24 Q. So you're on the right-hand side of the</p>

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1 picture, kind of midway up under some grayish,
2 block looking items?
3 A. Correct.
4 Q. And would you put a letter "B" next to
5 that picture?
6 A. (Witness complying).
7 Q. Thank you. And then the bottom picture
8 on that page?
9 A. Right here (Indicating).
10 Q. Just below the piece of heavy equipment
11 and to the left of the heavy equipment?
12 A. Yes.
13 Q. Okay. Would you put a letter "C"
14 there, please?
15 A. (Witness complying).
16 Q. And if we can go to the third page?
17 A. I don't see any debris piles on the
18 pictures 5 or 6.
19 Q. Okay. Thank you. So when you were
20 referring to debris piles when I was asking you
21 questions a little while ago on this, these
22 pictures, the ones that you've marked, show what
23 you were referring to as debris?
24 MR. KERESTER: Objection to

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1 form.
2 A. It shows a representation of what I
3 observed.
4 Q. Okay. But are you saying that what is
5 shown on those pictures that you have marked may
6 not have been all of the debris that you saw?
7 A. Correct.
8 Q. But it's representative of what you
9 saw?
10 A. I don't recall. I don't recall. There
11 might have been another debris pile of a
12 different material that's not shown in these
13 photos.
14 Q. Okay. Thank you. Did you observe any
15 debris being removed from the site while you
16 were there on this first day, May 2nd, 2002?
17 A. I don't recall. But in reviewing the
18 files maintained in either Exhibit 55 or 55A,
19 based on statements made in some of those
20 documents, it refers to the activity being
21 conducted.
22 Q. Would you show me where you are
23 referring to?
24 A. On the second page of Document 2 in

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1 Exhibit 55A.
2 Q. What are you reading from?
3 A. It indicates basement foundation
4 remaining and whole being backfilled.
5 Q. Would you point to where you're looking
6 at. Maybe I have the wrong page.
7 A. I don't believe that's the right
8 document. It indicates site inspection.
9 Q. Okay. This is on the May 2nd visit; is
10 that right?
11 A. Yes.
12 Q. Current conditions of site. That's the
13 metal debris sentence there. All debris --
14 you're talking about the phrase, "All debris
15 pulled out. Basement foundation remaining and
16 hole being backfilled"?
17 A. Correct.
18 Q. And from whom did you get the
19 information about all of the debris being
20 removed and the hole being backfilled? Where
21 did you get that information from? Was it from
22 observations or from a conversation?
23 A. I don't recall.
24 Q. Okay. How long were you at the site on

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1 this first visit on May 2nd?
2 A. I don't recall.
3 Q. Okay. Did you go back to the site
4 after that first visit?
5 A. No.
6 Q. Have you been back to that site at
7 anytime after May 2, 2002?
8 A. No.
9 Q. Did you ever go back to the City of
10 Lynn in connection with your work at that time
11 to do other research?
12 A. I may have. I don't recall.
13 Q. Okay. Would you have been able to
14 check records of the Fire Department or the
15 Housing Department or any of the places that you
16 say you gathered records from in Lynn without
17 going back there? Is there a way to do that
18 without going back to the city?
19 A. Over the phone, through faxing.
20 Q. Okay. So you could call up some of
21 these city agencies and ask them questions and
22 they would give you the information?
23 A. Correct.
24 Q. So to best of your recollection, the

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<p style="text-align: right;">94</p> <p>1 only time you were up to the site was May 2nd of</p> <p>2 2002?</p> <p>3 A. To the actual site itself, yes.</p> <p>4 Q. Are you distinguishing the actual site</p> <p>5 itself to something else?</p> <p>6 A. No. When you were referring to Lynn as</p> <p>7 the city.</p> <p>8 Q. What I was saying was the site.</p> <p>9 A. Yes.</p> <p>10 Q. How long were you at the site on May</p> <p>11 2nd?</p> <p>12 A. I don't recall.</p> <p>13 Q. Well, was it an hour, more than an</p> <p>14 hour?</p> <p>15 A. I don't recall.</p> <p>16 Q. Was it a whole day?</p> <p>17 A. I don't believe it was a whole day.</p> <p>18 Q. Okay. How long did you spend with</p> <p>19 Mr. Gateman and his company?</p> <p>20 A. I don't recall.</p> <p>21 Q. An hour, more than an hour, the whole</p> <p>22 day or as much as the day you stayed up there,</p> <p>23 were you with him the whole time?</p> <p>24 A. I don't recall.</p>	<p style="text-align: right;">96</p> <p>1 potential of having contamination?</p> <p>2 A. Yes.</p> <p>3 Q. If you would look at Page 10 of this</p> <p>4 report. And before I get to Page 10 -- I'm</p> <p>5 sorry. I have to ask you if this copy that I</p> <p>6 have in front of you complete and full as far as</p> <p>7 the report that was sent to the people at</p> <p>8 Envirotest? It has different materials</p> <p>9 throughout it, drawings, field notes. I want to</p> <p>10 make sure that they all belong to this report?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And that includes the field</p> <p>13 notes in the back of this report, which are on</p> <p>14 the Envirotest Laboratory heading. Those are</p> <p>15 part of it, too?</p> <p>16 A. Correct.</p> <p>17 Q. I actually put a flag where they</p> <p>18 started.</p> <p>19 A. Those are part of it.</p> <p>20 Q. So what I have here is a complete</p> <p>21 package?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Thank you. Were you aware at</p> <p>24 the time that you started your study on May 2,</p>
<p style="text-align: right;">95</p> <p>1 Q. Did you have anybody else with you --</p> <p>2 A. No.</p> <p>3 Q. -- from Goldman or any friend or any</p> <p>4 companion or assistant or whatever?</p> <p>5 A. No.</p> <p>6 Q. As a result of that visit on May 2nd</p> <p>7 and your observations and research, did you</p> <p>8 issue or write a report dated May 29, 2002? And</p> <p>9 I'll show you this pile of papers, which was</p> <p>10 55.</p> <p>11 A. Yes.</p> <p>12 Q. And you know it's your report because</p> <p>13 your signature is at the end; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Did you find any OHM contamination at</p> <p>16 the site?</p> <p>17 A. I identified the potential for OHM</p> <p>18 material to be at the site.</p> <p>19 Q. Okay. So my question was, did you</p> <p>20 identify any actual present OHM contamination at</p> <p>21 the site?</p> <p>22 A. No.</p> <p>23 Q. But you did identify, I think you were</p> <p>24 saying, some conditions that could have the</p>	<p style="text-align: right;">97</p> <p>1 '02, that an asbestos abatement had occurred on</p> <p>2 the property?</p> <p>3 A. Yes.</p> <p>4 Q. And that Envirotest had supervised that</p> <p>5 abatement process?</p> <p>6 A. Yes.</p> <p>7 Q. And was part of the work -- Strike</p> <p>8 that.</p> <p>9 Before writing your report, did you</p> <p>10 review all of the field notes that are part of</p> <p>11 this? I guess you would say it's Appendix E,</p> <p>12 before writing your report?</p> <p>13 A. I don't recall.</p> <p>14 Q. Would that have been your practice to</p> <p>15 have done that?</p> <p>16 A. I likely would have looked through</p> <p>17 them.</p> <p>18 Q. The abatement work was done sometime</p> <p>19 between March and April of 2002, right?</p> <p>20 A. Yes, based on their field notes</p> <p>21 completed by Envirotest, that's when it was</p> <p>22 done.</p> <p>23 Q. Okay. Now, if we could go to Page 10.</p> <p>24 On Page 10 you have what looks like you created,</p>

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1 a kind of a chart toward the lower half of the
2 page. Do you see that chart?
3 A. Yes.
4 Q. It's under Section 2.9.
5 A. Yes.
6 Q. And you have a building exterior, yes,
7 no and comments columns. Now, under the first
8 column where it says building exterior, there's
9 the words where there are soil piles or evidence
10 of filling activities. Do you see that?
11 A. Yes.
12 Q. And your answer was yes, there were.
13 A. Yes.
14 Q. And then you have some comments,
15 right?
16 A. Yes.
17 Q. Okay. What is the source of these
18 comments or sources of these comments?
19 A. The City of Lynn Building Department
20 and conversations with Mr. Gateman.
21 Q. And, again, are these quotations from
22 Mr. Gateman; so you're using his actual words,
23 or is this a summary of your understanding of a
24 particular conversation?

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1 A. I don't recall.
2 Q. So you could have quoted him. If you
3 quoted him do you think you would have put it in
4 quotes?
5 A. I don't recall.
6 Q. All right. At the time that you were
7 there, May 2nd, was all of the demolition debris
8 that at least was pictured in 55B, was all of
9 that demolition debris as you pointed out in
10 that picture, had that been removed from the
11 scene?
12 Let me start the question again.
13 That was a bad question. Is it fair to say that
14 any demolition debris that was on that property
15 when you saw it on May 2nd, not all of it had
16 been removed from the property at that time?
17 MR. KERESTER: Objection to
18 form.
19 MR. BRAVERMAN: I object.
20 A. During my site inspection I observed
21 piles of demolition debris.
22 Q. Ergo, it wasn't all removed?
23 A. Yes.
24 Q. Okay. So you actually never saw the

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1 site with no debris -- Strike that. Forget it.
2 Let me ask you to look at Page 16.
3 Again, you have that chart, and then you say
4 with regard to storage tanks, "Interview with
5 site contact." And your site contact then was
6 Mr. Gateman?
7 A. Yes.
8 Q. Okay. Page 24, please?
9 A. (Witness viewing document.)
10 Q. This appears to be part of your
11 findings beginning on 23 under solid waste. Do
12 you see that?
13 A. Yes.
14 Q. Okay. Would you read what you've
15 written there, please?
16 A. "Piles of solid waste. (Demolition
17 debris) were observed throughout the site.
18 Based on conversations with Mr. Gateman,
19 observed piles are scheduled to be removed and
20 properly disposed off site by Roberts
21 Dismantling and recycling."
22 Q. Did Mr. Gateman ever indicate to you
23 exactly which materials in any observed piles
24 that were scheduled to be removed and disposed

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1 of? Did he specify which materials were being
2 taken out of?
3 A. Not that I recall.
4 Q. You don't have any notes to refresh
5 yourself with?
6 A. No.
7 Q. Had he indicated which specific
8 materials were being removed, would it have been
9 your practice to have included the names of
10 those materials that he said?
11 A. Based on my notes I believe it
12 indicated all material. He indicated all
13 material.
14 Q. But he didn't specify what the
15 materials were that would constitute the all is
16 my question?
17 A. I don't recall.
18 Q. Okay. Had he done that, would it have
19 been your practice to record the specifics of
20 what he told you?
21 MR. KERESTER: Objection to
22 form.
23 A. I likely would have noted it if he
24 specified on specific piles rather than all. I

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1 would have noted the specific piles.
2 Q. And if he had noted specific kinds of
3 debris, would you have noted that?
4 A. Likely.
5 Q. Okay. During your site visit did you
6 have occasion to walk throughout the site
7 itself?
8 A. Yes.
9 Q. Did you do that?
10 A. Yes.
11 Q. Did you walk down into the basement,
12 for instance?
13 A. I don't recall.
14 Q. So do you recall any places on the site
15 that you walked?
16 A. I don't recall.
17 Q. Now, on Page 1 of this -- actually,
18 it's the cover letter that accompanies the
19 report, that May 29, 2002 letter.
20 A. Yes.
21 Q. Okay.
22 (Brief break taken).
23 BY MR. ROBBINS:
24 Q. After the May 2nd, 2002 visit, did you

1 March 29 '02. It says field notes on the page.
2 A. (Witness viewing document.)
3 Q. You've read these field notes, I think
4 you indicated, or you thought you had before
5 writing this report?
6 MR. BRAVERMAN: I object.
7 A. I don't recall.
8 Q. You don't recall whether you read them
9 or not?
10 A. I don't recall the timing of when I
11 read them.
12 Q. Have you ever read them?
13 A. I've looked through them.
14 Q. Okay. Is that different than reading
15 them? I don't know what you mean.
16 A. I've scanned them. I don't know if I
17 would say I read them word for word.
18 Q. Okay. Let me back up then and see if I
19 can get at it this way.
20 Did whatever contacts you had with
21 these notes, whether you scanned them or perused
22 them or whatever, did anything contained in
23 these field notes from any of the Envirotest
24 people form any part of the basis to your May

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1 ever have any other contact with Mr. Gateman
2 either live or by telephone or by e-mail or any
3 other means?
4 A. Not that I recall.
5 Q. Okay. I'd like to move for a moment to
6 what is in the back, and I actually had put a
7 little blue tab where the field notes are.
8 What is your understanding of the
9 authorship of these fields notes generally
10 speaking?
11 MR. BRAVERMAN: I object.
12 MR. KERESTER: What are you
13 referring to specifically?
14 MR. ROBBINS: There is a bunch
15 of field notes by Envirotest people.
16 MR. KERESTER: This is
17 appendix E?
18 MR. ROBBINS: Yes.
19 Q. Was it your understanding these were
20 field notes written by Envirotest people who
21 were supervising the asbestos removal?
22 A. Yes.
23 Q. Okay. I'd like to draw your attention
24 to a field note that's a few pages in marked

1 29, 2002 report, Phase 1 report?
2 MR. KERESTER: Objection to
3 form.
4 MR. BRAVERMAN: I object.
5 A. I don't recall.
6 Q. So you don't recall whether anything
7 that is in your report came from anything in
8 these field notes?
9 A. Correct, I don't recall.
10 Q. Is there any way you would be able to
11 determine this other than your memory, your
12 recollection?
13 A. I don't believe so.
14 Q. Okay.
15 MR. ROBBINS: I'd like to mark
16 this as 55C.
17 (Exhibit No. 55C received and
18 Marked for identification).
19 Q. We have previously marked as Exhibit 26
20 a report with a cover letter dated February 2,
21 2004 to James Hawkins from Goldman
22 Environmental. It's referred to as a limited
23 subsurface investigation. I'd like to show that
24 to you now, and ask you if you'd take a look at

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107	<p>1 testimony is that you made a site visit to the</p> <p>2 Lynn property on or about May 2nd, 2002; is that</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And while you were at the property did</p> <p>6 you meet with Mr. William Gateman?</p> <p>7 A. Yes.</p> <p>8 Q. And what was your purpose in meeting</p> <p>9 with him at that time?</p> <p>10 A. To conduct a site walk over and an</p> <p>11 interview with him.</p> <p>12 Q. Did you, in fact, interview Mr. Gateman</p> <p>13 while you were at the property on that day?</p> <p>14 A. Yes.</p> <p>15 Q. What was purpose in doing so?</p> <p>16 A. To determine his knowledge of the site</p> <p>17 in regards to current and historic operations at</p> <p>18 the site, if any subsurface investigations had</p> <p>19 previously been conducted at the site, if there</p> <p>20 had been any activity and use limitations placed</p> <p>21 on the site. Basically, to get an understanding</p> <p>22 of historic and current activities that had and</p> <p>23 were currently occurring at the site.</p> <p>24 Q. And did the purpose in so far as it</p>	109	<p>1 Q. And what, if any, are those?</p> <p>2 A. The document dated 5/2/02 indicated by</p> <p>3 site inspection. 12 o'clock, meet Bill Gateman.</p> <p>4 Q. And is that document two pages?</p> <p>5 A. It's three.</p> <p>6 Q. Three pages?</p> <p>7 A. Yes.</p> <p>8 Q. And does that include a diagram as</p> <p>9 well?</p> <p>10 A. Yes.</p> <p>11 Q. And this three-page document that you</p> <p>12 identified that has a date of 5/2/02 on the</p> <p>13 first page, does that document reflect your</p> <p>14 notes based on your interview of Mr. Gateman?</p> <p>15 MR. ROBBINS: I object to the</p> <p>16 form.</p> <p>17 Q. Let me rephrase the question. What</p> <p>18 does the three-page document reflect?</p> <p>19 A. It reflects observations I made at the</p> <p>20 time of the site inspection and conversations</p> <p>21 that I had with Mr. Gateman.</p> <p>22 Q. Okay. And when did you make those</p> <p>23 notes?</p> <p>24 A. At the time of the site inspection.</p>

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1 Q. Okay. Did you do that during the
2 course of your interview with Mr. Gateman?

3 MR. ROBBINS: Objection.

4 A. Yes.

5 Q. And the three-page document that is
6 contained within Exhibit 55A, is that a true and
7 accurate copy of the notes that you made on that
8 day?

9 A. Yes.

10 Q. Okay. To the best of your knowledge,
11 did you accurately set forth your observations
12 and the statements made to you by Mr. Gateman in
13 those notes?

14 A. Yes.

15 Q. I'd like to direct your attention to
16 the second page of those notes. At the top of
17 that page there's a statement that indicates,
18 quote, "Robert's Dismantling and Recycling is
19 removing debris off site and filling in hole,
20 end quote."

21 Have I accurately read your notes?

22 A. Yes.

23 Q. Did you make that statement based on
24 your observations or based on your interview

1 piles would be removed from the site.

2 Q. And did you make the statement to that
3 effect in your notes based on a statement made
4 to you by Mr. Gateman?

5 MR. ROBBINS: Objection.

6 A. I don't recall, but I wouldn't have
7 formed that opinion without having conversations
8 with him about that because I wouldn't have
9 known what the ultimate plans with the debris
10 piles would be.

11 Q. Did you interview anyone other than
12 Mr. Gateman on the site on May 2nd?

13 A. No.

14 Q. Directing your attention to the notes
15 that appear immediately below the reference to
16 the metal, slash, debris piles, what was the
17 source of the information that caused you to
18 make those notations?

19 A. I don't recall. I believe a portion of
20 it would have been observations.

21 Q. And would any portion of that have been
22 based on observations with Mr. Gateman to the
23 best of your recollection?

24 A. I don't recall.

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1 with Mr. Gateman?

2 MR. ROBBINS: Object to the
3 form.

4 A. I don't recall.

5 Q. What, if any, notes on Page 2 were made
6 by you on the basis of your conversation with
7 Mr. Gateman on May 2nd?

8 A. Could you repeat that question?

9 Q. Yes. What, if any, of the notes that
10 are contained on Page 2 of the three-page
11 document did you make on May 2nd based on your
12 interview with Mr. Gateman?

13 A. I don't recall. But based on the
14 statement, "to Mr. Gateman's knowledge no wells
15 of any kind on site," that would be based on a
16 conversation with him. I don't recall the
17 remaining statements, if they were based on
18 observations or conversations With Mr. Gateman.

19 Q. Okay. Let me direct your attention to
20 the words, "current conditions of site."

21 A. Yes.

22 Q. What, if any, conversations did you
23 have with Mr. Gateman regarding that subject?

24 A. Mr. Gateman indicated that the debris

1 Q. Directing your attention to the first
2 five pages of Exhibit 55A. It's a document
3 entitled, "Site inspection form;" is that
4 correct?

5 A. Yes.

6 Q. And can you tell me what this document
7 -- what this form is and how it's used?

8 A. It's a form used when conducting Phase
9 1 investigations. That acts as a reminder of
10 important questions to ask relevant to a Phase
11 1.

12 Q. And did you have this form with you on
13 May 2nd when you interviewed Mr. Gateman?

14 A. Yes.

15 Q. And how, if at all, did you use that
16 form in connection with your interview with
17 Mr. Gateman?

18 A. I don't recall.

19 Q. What would have been your ordinary
20 practice with respect to the use of this form in
21 conducting a site interview in connection with a
22 21E, Phase 1 report?

23 MR. ROBBINS: Objection.

24 A. Typically interview the site contact.

29 (Pages 110 to 113)

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1 And as I'm interviewing them, go through the
2 site inspection form to make sure I'm asking all
3 of the key questions relevant to a Phase 1.

4 Q. It's your handwriting that appears on
5 the site inspection form as part of Exhibit 55A;
6 is that right?

7 A. Yes.

8 Q. And do you recall when you made those
9 notations on that site inspection form?

10 A. I don't recall.

11 Q. What was your standard practice at that
12 time with respect to the preparation of the site
13 inspection form?

14 A. I typically take notes as I'm
15 interviewing the site contact.

16 Q. Was that your ordinary practice at the
17 time?

18 A. Yes.

19 Q. Do you have any understanding as to
20 whether you deviated from that ordinary practice
21 on the day that you interviewed Mr. Gateman?

22 MR. ROBBINS: Objection.

23 A. Can you repeat the question?

24 Q. Let me rephrase the question.

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1 as contained in 55A, is that a true and accurate
2 copy of the notations that you made on that day?

3 A. Yes.

4 Q. Okay. What, was your purpose in
5 indicating that information as reflected in that
6 handwritten notation under the heading current
7 use? Why did you set forth that use on the site
8 inspection report?

9 A. Part of a Phase 1 is determining how
10 solid waste is disposed of at a site.

11 Q. And how does what you just said relate
12 to the purpose for indicating the notes that you
13 did under the heading current use?

14 A. The demolition debris piles observed at
15 the site would have constituted solid waste, and
16 therefore I would have asked him how are these
17 piles disposed of.

18 Q. Do you have any understanding as to
19 whether the existence of solid waste is an
20 environmental condition?

21 MR. ROBBINS: Objection.

22 MR. BRAVERMAN: I object.

23 A. I'm not sure of what you're asking.

24 Q. Let me move on. Directing your

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1 Actually, let me just move on.

2 Directing your attention to the
3 first page of the site inspection form,
4 specifically to the heading of, "current use."

5 Can you identify, did you make a handwritten
6 notation indicating, "Quote, per Mr. Gateman,
7 all will be removed, slash, disposed."

8 A. Yes.

9 Q. And to the best of your recollection,
10 did you make that notation on or about May 2nd,
11 2002?

12 A. Yes.

13 Q. And what, if any, significance to you
14 as you testify today to the words "per
15 Mr. Gateman" have to do with respect to whether
16 that was a statement that Mr. Gateman had made
17 to you or not?

18 A. It would indicate to me that he had
19 made that statement.

20 Q. To the best of your knowledge, did you
21 accurately set forth the statement that he had
22 made to you under the heading current use?

23 A. Yes.

24 Q. And the five page site inspection form

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1 attention to Page 2, and specifically to the
2 section entitled, "site exterior."

3 How does the information that's
4 reflected under the heading site exterior relate
5 to the Phase 1 -- let me rephrase the question.
6 What is your purpose with respect to setting
7 forth the information that is reflected in the
8 heading site exterior?

9 A. Part of the Phase 1 is describing how
10 the site is currently used. Part of that is a
11 site description of how the site currently
12 appears.

13 Q. And if I could direct your attention to
14 the line item, "Debris piles." It has a "Y" and
15 an "N" next to it; is that correct?

16 A. Yes.

17 Q. And is that to indicate whether or not
18 there are debris piles present on a site?

19 A. Yes.

20 Q. Why is that information relevant, if at
21 all, to the preparation of the Phase 1 report?

22 A. Materials contained in a debris pile if
23 they were present at the site could be
24 constituted as a recognized environmental

30 (Pages 114 to 117)

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1 condition.

2 Q. As part of the process of preparing the
3 21E report for the Lynn property, did you
4 contact any officials from the City of Lynn?

5 A. Yes.

6 Q. And what was your purpose in doing so?

7 A. To determine if they had any files
8 relating to the site.

9 Q. Did you, in fact, request that some
10 files be provided to you?

11 A. I don't recall, but that would be the
12 standard practice.

13 Q. Okay. Directing your attention to
14 Exhibit 55, does that exhibit contain any
15 information that you received or any files that
16 you received from the City of Lynn? I don't
17 believe it was 55A, but rather the remainder of
18 55.

19 A. Yes.

20 Q. And where are you pointing to?

21 A. Within Appendix D.

22 Q. Which is part of the environmental
23 report?

24 A. Yes.

1 Q. To the best of your recollection,
2 Exhibit 55D, is that a true and accurate copy of
3 a document that you received from the City of
4 Lynn in response to a request for files or
5 information that you made to them?

6 A. It was either a copy that they provided
7 or that I made a copy when I went in to review
8 their files.

9 Q. I'd like to direct your attention to
10 the Phase 1 report, which I believe has been
11 marked as Exhibit 55C.

12 A. (Witness viewing document.)

13 Q. Specifically if I direct your attention
14 to Page 4. I'd like to direct your attention to
15 the Paragraph 2.41, and the second to last
16 sentence of that first paragraph that begins
17 with, "Based on." Could you read that into the
18 record, please.

19 A. Based on conversations with
20 Mr. Gateman, all demolition, debris, has been or
21 will be hauled off site by Roberts Dismantling
22 and Recycling."

23 Q. To the best of your recollection, does
24 that statement accurately reflect statements

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1 Q. Okay. Aside from the environmental
2 report, do the documents that consist of Exhibit
3 55 contain any other files that you received
4 from the City of Lynn? I'll direct your
5 attention to the original file materials.

6 A. Yes.

7 Q. And what are you pointing to now?

8 A. The documentation from the Lynn Fire
9 Department.

10 Q. And are there any other documents in
11 addition to that?

12 A. I think it's the same document. A
13 document on Building Department letterhead.

14 Q. What is the date of that document?

15 A. March 4th, 2002.

16 Q. And is that the document that you're
17 referring to now, is that a copy of the document
18 that you received from the City of Lynn to the
19 best of your recollection?

20 A. To the best of my recollection.

21 MR. KERESTER: I'd like to
22 mark that page as Exhibit 55D.

23 (Exhibit No. 55D received and
24 Marked for identification).

1 made to you by Mr. Gateman?

2 MR. ROBBINS: I object to the
3 form.

4 A. Yes, based on my filed notes.

5 Q. Directing your attention to Page 10,
6 and in particular to the lower right-hand corner
7 of the chart that appears at the bottom of that
8 page, can you read the sentence into the record
9 that begins with, "Based on"?

10 A. The second one?

11 Q. Correct.

12 A. "Based on conversations with
13 Mr. Gateman, during the demolition of the site
14 building, asbestos abatement activities were
15 conducted."

16 Q. Can you read the follow-up sentence,
17 too?

18 A. "Mr. Gateman stated that all building
19 materials containing asbestos were removed from
20 the site and disposed of off site."

21 Q. The following sentence as well?

22 A. "Additionally, all demolition debris
23 was hauled off site or is in the process of
24 being hauled off site for proper disposal."

31 (Pages 118 to 121)

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122	<p>1 Q. And what was your purpose in setting</p> <p>2 forth that information in the 21E report?</p> <p>3 A. To indicate how the demolition debris,</p> <p>4 which would be considered solid waste, was going</p> <p>5 to be disposed of from the site.</p> <p>6 Q. And in the event that it was your</p> <p>7 understanding that the demolition debris would</p> <p>8 remain on the site, how would that impact your</p> <p>9 findings that you set forth in the 21E, Phase 1</p> <p>10 report?</p> <p>11 A. We would have recommended that the</p> <p>12 demolition debris piles be removed and properly</p> <p>13 disposed of off site.</p> <p>14 Q. And why is that?</p> <p>15 A. It would have been considered an</p> <p>16 environmentally recognized condition.</p> <p>17 Q. Directing your attention to Page 23.</p> <p>18 At the top of the page there's a heading,</p> <p>19 "Findings;" is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And can you read the last sentence of</p> <p>22 the paragraph before we get to the bulleted</p> <p>23 items?</p> <p>24 A. "Following is a summary of known or</p>	124	<p>1 that appears under the heading, "solid waste,"</p> <p>2 what was that source of that information?</p> <p>3 A. Conversations with Mr. Gateman.</p> <p>4 Q. And to the best of your knowledge, does</p> <p>5 that sentence accurately reflect statements made</p> <p>6 to you by Mr. Gateman on or about May 2nd, 2002?</p> <p>7 MR. ROBBINS: Objection.</p> <p>8 A. Yes, based on my field notes.</p> <p>9 Q. Okay. Have you had the opportunity to</p> <p>10 review the 21E, Phase 1 report that's been</p> <p>11 marked as Exhibit 55C since the date that you</p> <p>12 prepared it?</p> <p>13 A. Yes.</p> <p>14 Q. And, in fact, did you prepare it on or</p> <p>15 about -- let me rephrase.</p> <p>16 Did you complete the report on or</p> <p>17 about May 29, 2002?</p> <p>18 A. Yes.</p> <p>19 Q. And based on your subsequent review of</p> <p>20 the report, have you identified whether you</p> <p>21 inaccurately set forth any information provided</p> <p>22 to you by Mr. Gateman?</p> <p>23 MR. ROBBINS: Objection.</p> <p>24 Q. Let me rephrase the question. To the</p>
123	<p>1 suspect environmental conditions associated with</p> <p>2 the property".</p> <p>3 Q. Okay. did you, in fact, then on Page</p> <p>4 23 and Page 24 set forth a known or suspect</p> <p>5 environmental condition associated with the</p> <p>6 property?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Directing your attention to Page</p> <p>9 24 what, if any, findings did you make regarding</p> <p>10 known or suspect environmental conditions at the</p> <p>11 property in connection with the issue of solid</p> <p>12 waste?</p> <p>13 A. We stated -- the report states, "Piles</p> <p>14 of solid waste (demolition debris) were observed</p> <p>15 throughout the site. Based on conversations</p> <p>16 with Mr. Gateman, observed piles are scheduled</p> <p>17 to be removed and properly disposed off site by</p> <p>18 Robert's Dismantling and Recycling."</p> <p>19 Q. What was your purpose in using the</p> <p>20 words, quote, "based on conversations with</p> <p>21 Mr. Gateman." End quote.</p> <p>22 A. To indicate where the knowledge of how</p> <p>23 the solid waste would be disposed of come from.</p> <p>24 Q. So with respect to the second sentence</p>	125	<p>1 best of your knowledge, did you accurately set</p> <p>2 forth -- Strike that.</p> <p>3 Approximately how many times have</p> <p>4 you reviewed the reports since you completed the</p> <p>5 preparation on or about May 29, 2002?</p> <p>6 A. Two or three.</p> <p>7 Q. And based on those reviews, have you</p> <p>8 made any determination as to whether you</p> <p>9 erroneously set forth any information in the</p> <p>10 report?</p> <p>11 MR. ROBBINS: Objection.</p> <p>12 A. No.</p> <p>13 Q. No, you haven't made any determination,</p> <p>14 or, no, you're not aware of having made any</p> <p>15 erroneous --</p> <p>16 A. I'm not aware of having made any</p> <p>17 erroneous statements.</p> <p>18 Q. Directing your attention to Page 20 of</p> <p>19 the report. Approximately in the middle of the</p> <p>20 page in the lower right-hand corner of that</p> <p>21 chart under the heading, "Description." Can you</p> <p>22 read that entry. This is on the lower right-</p> <p>23 hand corner.</p> <p>24 A. "The site is currently undergoing</p>

32 (Pages 122 to 125)

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<p>1 filling and regrading. Robert's Dismantling and 2 Recycling is currently transporting fill dirt 3 onto the site to fill in the former basement 4 areas to even out the grade of the site." 5 Q. What was your understanding at the time 6 that you completed this report in terms of what, 7 if anything, was going to be filled into the 8 former basement area of the -- what, if 9 anything, was your understanding as to what 10 would be filled into the former basement area on 11 the site? 12 A. Clean fill. 13 Q. And what was the source of that 14 understanding? 15 A. Conversations with Mr. Gateman and 16 observations made at the site. 17 Q. At the time that you completed the 18 report, what was your understanding as to 19 whether the demolition debris would or would not 20 be removed? 21 A. My understanding is that the demolition 22 debris would be removed. 23 Q. Did you have any understanding at that 24 time that any demolition debris would remain on</p>	<p>1 hazardous waste; is that correct? 2 A. Yes. 3 Q. I believe you were also questioned 4 about the existence of regulations concerning 5 the regulations of hazardous waste; is that 6 correct? 7 A. Yes. 8 Q. Is it your understanding that, in fact, 9 there are regulations set forth by the 10 Massachusetts Department of Environmental 11 Protection regarding hazardous waste? 12 A. Yes. 13 Q. And that's your area of specialization 14 and expertise; is that correct, at least some 15 portion of that? 16 MR. ROBBINS: Objection. 17 A. Yes. 18 Q. Are you aware of whether there are also 19 regulations promulgated by the Massachusetts 20 Department of Environmental Protection regarding 21 solid waste? 22 A. Yes. 23 Q. And is it your understanding that those 24 are different sets of regulations?</p>
127	129
<p>1 the site? 2 A. Based on my notes, no. 3 Q. Would you have indicated that type of 4 information in your Reports if that, in fact, 5 had been your understanding? 6 A. Yes. 7 Q. Did Mr. Gateman make any statement to 8 you that any of the demolition debris would 9 remain on the site? 10 A. I don't recall. 11 Q. To the extent that he had made any such 12 statement, what would your ordinary practice 13 have been with respect to setting forth such 14 information in your notes? 15 A. I would have indicated in my notes what 16 debris piles were slated to remain on the site 17 versus what piles were slated to be disposed off 18 the site. 19 Q. And did you make any notations in your 20 notes indicating that any of the demolition 21 debris was going to remain on the site? 22 A. No. 23 Q. I believe you were questioned earlier 24 by Mr. Robbins concerning the subject of</p>	<p>1 A. Yes. 2 MR. KERESTER: I have no 3 further questions. Thank you. 4 * * * 5 EXAMINATION BY MISS ENGBERG: 6 Q. Hi, my name is Kristina Engberg, and I 7 represent Robert's Dismantling and Recycling. 8 A. Hi. 9 Q. During your work at Goldman, or as part 10 of your work at Goldman, do you asses soil 11 borings? 12 A. Yes. 13 Q. During the soil boring process, 14 sometimes are those borings refused? 15 A. Yes. 16 Q. And what does that mean? 17 MR. BRAVERMAN: I object. 18 Answer it if you can. 19 A. It could mean many different things. 20 It all depends on the type of drilling apparatus 21 that you're using. You could be hitting a 22 cobble. You could be hitting bedrock. You 23 could be in tight fill and the drilling 24 equipment that you're using just doesn't have</p>

33 (Pages 126 to 129)

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1 the power to go through it. It could mean
2 numerous things.
3 Q. And how would you go about determining
4 why a particular boring was refused?
5 A. You could attempt to install additional
6 borings in the general vicinity of where you
7 encountered refusal to see if you get deeper
8 than the depth where you had hit refusal.
9 You might infer that you had hit a
10 cobble. If you continue to hit refusal at the
11 same depth, you could be hitting bedrock or you
12 could just be in a tight material that the drill
13 apparatus doesn't have the capability of
14 drilling through.
15 Q. Is that something that's typically done
16 in installing other borings in the vicinity?
17 A. It depends on the scope of work.
18 Q. And you've referred to cobble. What is
19 that?
20 A. A large rock.
21 Q. During the course of your Phase 1
22 investigation, did you ever have any
23 conversations with anybody from Robert's
24 Trucking?

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1 Photograph A, based on the description, it
2 indicates in the middle portion of the site; so
3 I would say that.
4 Q. Is that the determinant used, middle
5 portion?
6 A. Middle portion.
7 Q. Does that identify the area for you?
8 A. Based on that description, I would say
9 it would be in the middle of the property.
10 Q. Okay. I understand. But independently
11 you don't recognize what you see and say, oh,
12 yeah, I remember that, that was here?
13 A. I don't recall where I was standing
14 when I took the photo, no.
15 Q. And you don't recall -- actually, I
16 wasn't asking you so much where you were
17 standing as what you're seeing.
18 A. Right. I don't recall that either.
19 Q. Okay. Could we look at the next
20 letter, please?
21 A. Can I refer to a different figure just
22 to make sure that I'm orienting this correctly?
23 Q. Whatever you need to refer to.
24 A. (Witness viewing document).

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1 A. Not that I recall.
2 MISS ENGBERG: That's all I
3 have. Thank you.
4 MR. ROBBINS: I actually have a
5 couple of follow ups.
6 * * *
7 EXAMINATION BY MR. ROBBINS:
8 Q. I'd like to show you a map or a plan,
9 and ask you if you recognize what it shows?
10 A. I believe it's the site of 190 to 200
11 Union Street.
12 Q. Okay. I believe you're right. When
13 you were there, were there any buildings on the
14 property?
15 A. No.
16 Q. Do you know from the photographs,
17 Exhibit 55B, can you by looking at each of these
18 photographs, can you -- actually, by looking at
19 the ones that you've marked, the A, B, C
20 photographs, can you look at each one in turn
21 and tell me in reference to this plan what your
22 memory is or the description. if it helps you,
23 of what that photograph depicts on the plan?
24 A. (Witness viewing document.) In

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1 Q. You're looking at something in Exhibit
2 55 to help orient you south to north?
3 A. Yes.
4 Q. Okay.
5 A. Picture B is looking in this general
6 vicinity of the site.
7 Q. Okay. And what makes you say that? Is
8 that based on memory or based on some
9 reasoning?
10 A. Indicating the south west portion of
11 the site.
12 Q. And by what you've looked at, you feel
13 that the area of this plan that represents the
14 south west portion of the site is up in the --
15 as you're standing on Union Street and facing
16 the property, it would be the lower right corner
17 where Lot C is written?
18 A. Yes.
19 Q. In a moment I'll ask you to draw a
20 circle. Could you look at the next photograph
21 that you had marked a letter on.
22 A. Letter C. Somewhere in this area of
23 the site.
24 Q. Okay. And you put your finger in a

34 (Pages 130 to 133)

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1 certain area. How come you're focused on that
2 area? Is that because you remember that's where
3 the stuff was, or are you reasoning it out?
4 A. I'm mostly reasoning it out.
5 Q. Based on what then?
6 A. In Picture C behind the large piece of
7 equipment a building wall is visible, which is
8 also visible in Picture B; so based on that and
9 the description that indicates looking west from
10 the east boundary.
11 Q. Which would be the east boundary?
12 A. This would be the east boundary, and
13 that would be the west boundary (Indicating).
14 Q. In other words, Union Street would be
15 on the western side of the property, and I don't
16 know what this other street is. It's cut off.
17 A. It's cut off.
18 Q. But the other one where it says "S
19 Street," not the name, but that would be the
20 eastern boundary of the property?
21 A. Correct.
22 Q. So School Street up at the top would be
23 the northern edge?
24 A. Correct.

1 seeing? I'm not asking what direction you're
2 looking. I'm asking what portion is visible in
3 the picture?
4 A. Maybe from -- it's hard to tell, but
5 from somewhere from here to there.
6 Q. Okay. Would you put your best estimate
7 as to what that is showing?
8 A. Okay.
9 Q. Again, in the portion of the ground.
10 I'm not talking about the direction.
11 A. Right. (Witness complying).
12 Q. Okay. And would you write in there
13 Photo C?
14 A. (Witness complying).
15 Q. And then would you draw another shape
16 to represent the area of the ground depicted in
17 Photo B, which we talked about before but we
18 didn't draw?
19 A. (Witness complying).
20 Q. And if you'd label that Photo B,
21 please?
22 A. (Witness complying).
23 Q. Can you sign this and date this today
24 as the 18th so we know it's yours?

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1 Q. So this Photograph C description, is it
2 saying it's located where now?
3 A. Looking west from the east boundary.
4 Q. So it's looking from the sort of S
5 Street that we're calling towards Union Street?
6 A. Toward Union Street.
7 Q. Okay. I understand that.
8 A. Just by reasoning it out and looking at
9 the photos, it looks like I was on the northern
10 portion of the east side of the site.
11 Q. Okay. And photographing looking in the
12 direction of Union Street?
13 A. Correct.
14 Q. And so where on here would you put your
15 finger again as to where you feel Picture C
16 shows?
17 A. A large portion. It would show this
18 whole vicinity of the site.
19 Q. Okay. May I just see it for a second,
20 please? We're talking about the same picture.
21 Picture C shows a big machine, a big yellow
22 machine?
23 A. Yes.
24 Q. So what of the ground are you actually

1 A. (Witness complying).
2 (Exhibit No. 57 received and
3 Marked for identification).
4 Q. Do you have any memory other than the
5 pictures that you've indicated A, B and C that
6 we have here, and we further plotted on the map
7 here on this plan, do you have any independent
8 memory of seeing any other debris piles on the
9 property?
10 A. I don't recall.
11 Q. Okay. So you don't recall whether you
12 saw any debris piles or not?
13 A. Correct.
14 Q. Did Mr. Gateman at any point say that
15 he was removing the leftover brick from the
16 building off property, specifically talking
17 about brick?
18 A. I don't recall.
19 Q. Okay. Did he ever say he was removing
20 any leftover concrete from the building that was
21 demolished?
22 A. I don't recall.
23 MR. KERESTER: Objection to form.
24 Q. Had he told you I'm removing

35 (Pages 134 to 137)

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1	everything, but I'm leaving the brick and I'm	1	CERTIFICATE
2	leaving the concrete, do you think you would	2	I, LAUREN McKINLAY, do hereby certify
3	have noted that in your report?	3	that I have read the foregoing transcript of my
4	A. Yes.	4	testimony, and further certify that it is a true
5	Q. Okay. And why would you have noted it?	5	and accurate record of my testimony (with the
6	A. To indicate clearly which demolition	6	exception of the corrections listed below):
7	would be removed from the site and which would	7	Page Line Correction
8	be remaining at the site.	8	
9	Q. Okay. Brick and concrete would not --	9	
10	as your understanding of these regulations,	10	
11	would not be considered hazardous waste; is that	11	
12	correct, just plain brick and concrete not	12	
13	contaminated with anything else; is that right?	13	
14	A. Yes.	14	
15	Q. Do you know if it is considered, quote,	15	
16	"solid waste" under Massachusetts regulations?	16	
17	A. I don't recall.	17	
18	Q. Okay.	18	
19	MR. ROBBINS: I'm done.	19	Signed under the pains and penalties of perjury
20	MR. KERESTER: I don't have	20	this
21	any questions.	21	_____ day of _____, 2005.
22	MISS ENGBERG: I don't have	22	
23	any questions.	23	
24	(The deposition concluded at	24	LAUREN McKINLAY
139		141	
1	Four o'clock p.m.)	1	COMMONWEALTH OF MASSACHUSETTS
2		2	SUFFOLK, SS.
3		3	
4		4	I, Tara L. Wosny, Certified Shorthand
5		5	Reporter and Notary Public in and for the
6		6	Commonwealth of Massachusetts, do hereby certify
7		7	that LAUREN McKINLAY, the witness whose
8		8	deposition is herein before set forth, was duly
9		9	sworn by me and that such deposition is a true
10		10	record, to the best of my ability, of the
11		11	testimony given by the witness.
12		12	I further certify that I am neither related
13		13	to or employed by any of the parties in or
14		14	counsel to this action, nor am I financially
15		15	interested in the outcome of this action.
16		16	In witness whereof, I have hereunto set my
17		17	hand and seal this 23rd day of November, 2005.
18		18	
19		19	Notary Public
20		20	My commission expires:
21		21	June 10, 2009
22			
23			
24			

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